WINTER 2020

Substance

Illinois Mechanical & Specialty Contractors Association

Giuseppe Muzzupappa,
IMSCA President

An Unexpected Journey

Take a minute to reflect on this: General Assembly Turnover Rate of forty-two percent. A forty-five billion dollar Capital Bill. Legalized Marijuana. Expanded Gambling. Retainage Reform. Bribery. Corruption. A Paralyzing Pandemic.

If I told you in January of 2019 that all of these events would happen during my two years as IMSCA's President – would you have believed me? Perhaps the bribery and corruption part but likely not all the other items.

We've all been faced with [dare I say it] "unprecedented" challenges that we never imagined. If it has taught us anything, we've learned how to accept it, adapt and move forward. This notion is built into the DNA of IMSCA's contractors and associations. In my journey as President as well as the preceding officer positions, that is what I have discovered to be the greatest attribute of the organization.

As my journey comes to a close as President, I would like to express my sincerest gratitude to every person and group who supports the organization. It was a privilege to work with an elite team of elected Officers, Executive Director Jessica Newbold Hoselton and General Counsel Jim Rohlfing – who all had the member's best interest in mind. I appreciated the Committees that continued to meet and discuss industry issues despite the absence of a General Assembly. The generosity of IMSCA-PAC prize donors who provide gifts for the raffle year after year is truly remarkable. Not to mention the thoughtfulness of past sponsors of Lobby Day and contributors of the PAC fund who provided financial support, especially those who gave during times of the pandemic.

As we hope that 2021 will really look like a "new" year, I want to make certain your legislative interests are in great hands as new President Chad Fricke and the rest of the Officers take office. Thank you for allowing me to serve as your President. To say it was a pleasure is an understatement.

Happy Holidays and Cheers to a normal 2021!

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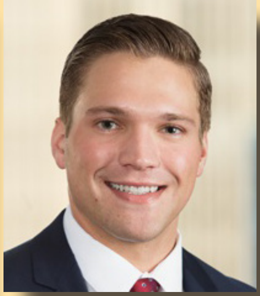

Legislative Representation for over 2,000 Construction Employers

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featured **story**

Recent and Upcoming Changes to Capital Development Board Contracts

Amy Romano is the General Counsel and Ethics Officer for the Capital Development Board (CDB). In this capacity, Amy oversees CDB's Legal Department. She provides legal advice and ethical guidance on a variety of issues and serves on CDB's Executive Team. Before joining CDB, Amy spent 12 years with the Illinois Attorney General's Office as an Assistant Attorney General. A native of Du Quoin, Amy earned her Bachelor of Arts in Speech Communication from the University of Illinois and graduated from the Southern Illinois University School of Law.

The Illinois General Assembly recently passed legislation containing new programs and initiatives for State public works projects that has been approved by Governor Pritzker. As the agency responsible for managing the construction of State buildings and facilities, the Capital Development Board (CDB) updated its contracts to reflect the latest legislation, effective November 1, 2020.

The changes include adopting the Apprenticeship Initiative from the new Illinois Works Jobs Program Act (30 ILCS 559) and changes to the participation program in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575). In addition, the process for submitting certified payroll forms has changed (820 ILCS 130/5), and the Illinois Department of Labor has announced the requirements of the Employment of Illinois Workers on Public Works Act (30 ILCS 570) are now in effect. Each of these updates are discussed in more detail below.

CDB has been working to educate its vendor community and industry partners about these changes and recently hosted a vendor training on the contract revisions. Informational materials and a video recording of the training are available on CDB's website.

IL WORKS JOBS PROGRAM ACT

The Illinois Works Jobs Program Act was created "to ensure that all Illinois residents have access to State capital projects and careers in the construction industry and buildings trades, including those who have been historically underrepresented in those trades." (30 ILCS 559/20-1). The Act, administered by the Illinois Department of Commerce and Economic Opportunity (DCEO), consists of three different programs to expand access to construction and trade work.

> *"The Illinois Works Jobs Program Act was created 'to ensure that all Illinois residents have access to State capital projects and careers in the construction industry and buildings trades..."*

First, the Act creates the Illinois Works Preapprenticeship Program. This is a grant program that aims to "create

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a network of community-based organizations throughout the State that will recruit, prescreen, and provide preapprenticeship skills training" to produce "a qualified, diverse pipeline of workers who are prepared for careers in the construction and building trades." (30 ILCS 559/20-15).

Second, the Act creates the Illinois Works Bid Credit Program. This Program provides bid credits to eligible contractors and subcontractors to use toward bids on future State public works projects. The bid credits are economic incentives "to encourage contractors and subcontractors to provide contracting and employment opportunities to historically underrepresented populations in the construction industry." (30 ILCS 559/20-15). In order to be eligible for bid credits, contractors or subcontractors must employ apprentices on State public works projects that have completed the Illinois Works Preapprenticeship Program. Both the Preapprenticeship Program and the Bid Credit Program are currently being developed by DCEO along with input from stakeholders.

Third, the Act creates the Illinois Works Apprenticeship Initiative. Under this part of the Act, a 10% apprenticeship goal applies to either the total labor hours actually worked in each prevailing wage classification for a project or a 10% goal applies to the estimated labor hours in each prevailing wage classification, whichever is less. The apprenticeship goal applies to all public works projects with an estimated project cost of $500,000 or more. In administrative rule, DCEO has further clarified when the Illinois Works Jobs Program Act Apprenticeship Initiative applies based on the estimated total project cost and the State's contribution to the project. (14 Ill. Adm. Code 680). For projects with an estimated total project cost of $500,000 or more and for which 50% or more of the project is being funded by State appropriated capital funds, the 10% apprenticeship goal applies to all prevailing wage eligible work on the project. For projects receiving $500,000 or more of appropriated capital funds but for which the appropriated capital funds are less than half of the total project costs, the 10% apprenticeship goal only apples to prevailing wage eligible work being funded by the State appropriated capital funds. The Apprenticeship Initiative is established and is currently in effect for State public works projects. Since this is a new program, CDB contracts needed to be modified to adopt the Apprenticeship Initiative for CDB projects and new forms were created to support the program. These new forms, along with the revised contracts, are available at the Reference Library on CDB's webpage.

Questions about CDB's implementation of the Illinois Works Jobs Program Act can be directed to Amy Romano, CDB General Counsel, at Amy.Romano@Illinois.gov or 217-782-0700, or Lauren Noll, CDB Deputy General Counsel, at Lauren.Noll@Illinois.gov or 312-771-3443.

BUSINESS ENTERPRISE FOR MINORITIES, WOMEN, AND PERSONS WITH DISABILITIES ACT

CDB projects are subject to the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (BEP Act). The BEP Act governs the goal-setting and participation process to expand access to public works projects. Recent legislative changes to the BEP Act impact CDB projects. One of the more significant changes is the creation of a new aspirational goal classification for CDB projects. This new classification is for businesses owned by persons with disabilities (30 ILCS 575/4(b)). CDB refers to this new goal class as "PBE", which stands for Persons with Disabilities Business Enterprise. Expect to start seeing PBE goals on CDB projects in the very near future, as we continue efforts to bring in new firms to do CDB work.

Another change creates an expedited process for certifying Business Enterprise Program (BEP) firms with the Illinois Department of Central Management Services (CMS). Under the BEP Act, all firms utilized to meet goals on State projects must be certified by CMS. A new process is in place allowing firms already certified with the City of Chicago and Cook County to use a new, accelerated process for obtaining State certification (30 ILCS 575/5(2)(a)). This new program is known as the FastTrack certification process and allows for certifications in 7 days or less. More information about the FastTrack program is available on CMS's website.

The BEP Act revisions also contain new requirements to receive a good faith effort waiver. If a contractor is unable to meet the goals for a project, the contractor can seek an exemption from the goals through the waiver process. In requesting a waiver, the contractor submits information to CDB for review. This is called the good faith effort review process, since CDB grants waivers upon a contractor's showing that they employed good faith efforts in attempting to satisfy the goals (30 ILCS 575/7). Among other things, contractors now have to provide a list of all certified BEP firms that can do the work, along with a list of all BEP firms the contractor has used in the current and prior fiscal year, if such information is available. CDB will be required to evaluate waiver requests based on new criteria such as the total number of waivers the contractor has been granted in the current and prior fiscal year.

Finally, CDB revised its procedures on processing blank 00 41 05 Forms. Contractors who bid CDB projects are familiar with CDB's 00 41 05 Form. A sample 00 41 05 Form from CDB's website can be found here. Bidders

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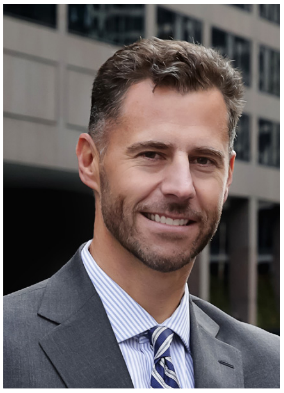
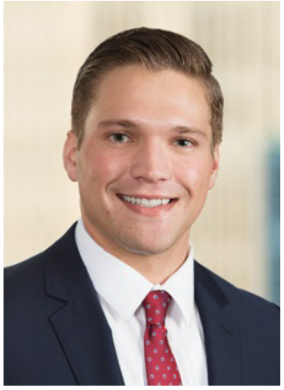


Quantifying Lost Labor Productivity Claims

John Sebastian is the managing partner of Watt Tieder Hoffar & Fitzgerald's Chicago office. He focuses his practice primarily in the areas of surety bond, construction and commercial litigation. John has represented sureties, contractors, architects, engineers, design/builders, and trade contractors in payment disputes, design defect claims, delay claims, defective work claims, and contractor, subcontractor and owner bankruptcies.



Brian Padove is an associate attorney in Watt Tieder Hoffar & Fitzgerald's Chicago office. Licensed in Illinois, Indiana, and Wisconsin, Brian focuses his practice in the areas of construction, commercial litigation, and suretyship.

Weather, restricted site access, out-of-sequence work, acceleration... The list of factors affecting labor productivity is endless, and during these volatile times, it is imperative contractors understand the nature of subsequent lost labor productivity claims and what contractors can do to support such claims. With that, a key element in proving a labor productivity claim is calculating and ascertaining the amount of lost productivity resulting from the unanticipated occurrence. Unfortunately, though, the calculation of this number is not an exact science and often leads to uncertain and/or conflicting results. That said, there are numerous methodologies used to calculate and quantify a loss in labor productivity with each of these methods using different data, documents, and/or records. This article provides a brief summary of some of the popular quantification methods used, documents relied upon therein, and steps contractors may take in order to protect their potential lost labor productivity claim.

> *"A key element in proving a labor productivity claim is calculating and ascertaining the amount of lost productivity resulting from the unanticipated occurrence."*

First, the "measured mile" method of calculating lost labor productivity compares work performed in one period (that was not affected by the event causing the loss of productivity) with similar work performed in another period during where the work did suffer impacts due to productivity-affecting events such as weather or restricted site access. In short, this method analyzes project-specific progress, resources, and performance data during a non-affected period of work against an affected period of work in order to calculate the extent of the productivity loss caused by the occurrence.

Similarly, the "earned value analysis" method examines how much time and budget should have been spent compared to the amount of work completed through the analysis of, among other things, work estimates, pay applications indicating percentage of work completed, and labor hours. Accordingly, this method also relies upon project-specific documents and data.

While the above-two methods rely upon examinations of work actually performed

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Quantifying Lost Labor Productivity Claims (continued from page 4)

and documents related thereto, cost-based and cumulative impact analyses methodologies use more arithmetical computations to quantify productivity loss utilizing documents such as original estimates, final costs, and scheduling. However, to the extent the project documents are unreliable or unavailable, one must look to other non-project-specific methodologies to quantify productivity losses such as general industry or academic studies and publications. One such example is the Mechanical Contractors Association of America's publication analyzing 16 factors affecting labor productivity. While these studies attempt to provide assistance to the calculation of a labor productivity loss claim, they are subject to more scrutiny given that they do not take into account project-specific factors and their general nature.

Accordingly, one of the most important steps a contractor can take to preserve and support its potential claim is to keep consistent and systematic records from the inception of a project. For example, a contractor should: (1) document all information and data used in its bid, (2) confirm all oral directives which may impact labor productivity such as field-directed changes, and (3) be proactive in documenting all work performed on the project, including daily logs and reports, payroll records, tracking of geological and weather data, and tracking of daily quantities of work completed. A contractor taking these simple proactive steps to take consistent, systematic project records may mean the difference in using a project-specific labor productivity loss calculation (such as the measured mile method) as opposed to having to rely on a more-scrutinized general industry-wide analysis. While some cases may call for such an industry-wide analysis, being able to potentially turn to the project-specific methodologies in conjunction with industry-wide analysis will assist in providing more certainty to the uncertain science of calculating a lost productivity claim and help the contractor alleviate the potential impacts of an unanticipated loss in labor productivity. ■

Recent and Upcoming Changes... (continued from page 3)

list the firms they intend to use to meet participation goals on the 00 41 05 Form. If a bidder submits a blank 00 41 05 Form, with no eligible participation listed, CDB's previous process was to grant a four-day cure period to the bidder to either find more participation or submit documentation of their good faith efforts in attempting to meet the goal. Working with our Chief Procurement Officer, this process has been revised. If a blank 00 41 05 Form is submitted at time of bid, good faith effort documentation must also be submitted at time of bid or the bid will be rejected. If good faith effort documentation is submitted, the bidder will be granted 10 days to try to gain more BEP participation for the project.

Questions related to CDB's changes involving the BEP Act can be directed to Jesse Martinez, CDB's Fair Employment Practices Administrator. Jesse's email address is Jesse.Martinez@Illinois.gov. He can be reached by phone at 217-299-7603.

CERTIFIED PAYROLL

The Illinois Prevailing Wage Act requires contractors to submit certified payroll records of all workers for public works projects (820 ILCS 130/5). The Prevailing Wage Act and certified payroll requirements are under the authority of the Illinois Department of Labor (IDOL). The General Assembly passed legislation requiring IDOL to create an online portal for the submission of certified payroll documents directly to IDOL. Currently, CDB collects certified payroll records from contractors and provides them to IDOL.

The new online portal went live on September 1. CDB does not have access to the online portal but relies on certified payroll information in many aspects of project management. Until CDB has access to the portal contractors need to submit certified payroll records to both IDOL through the portal and separately to CDB. Once CDB has full access to IDOL's certified payroll portal, CDB will be making changes to its contract documents instructing contractors to submit certified payrolls directly to IDOL.

Additional information on the new certified payroll portal is available on IDOL's website.

EMPLOYMENT OF IL WORKERS ON PUBLIC WORKS ACT

The Employment of Illinois Workers on Public Works Act provides that contractors on State-funded projects must have Illinois laborers for at least 90% of the project workforce (30 ILCS 570). This requirement applies during periods of excessive unemployment, defined as two consecutive calendar months when the Illinois unemployment rate exceeds 5%. IDOL is responsible for administration of this Act. IDOL announced that the workforce residency requirement went into effect July 1, 2020 and remains in effect. The residency requirement is subject to a waiver process if not enough Illinois workers are available or if Illinois workers are unable to perform the work. CDB is working with IDOL to finalize the waiver process, and revisions to CDB's contract documents may be needed.

Additional information about the Act is available on IDOL's website.

CDB appreciates the work done by our IMSCA partners and looks forward to continuing good working relationships for many years to come. ■

An Alternative to Litigation

Judge Curcio is a senior mediator and arbitrator with almost 30 years of legal and judicial experience. She focuses her arbitration and mediation practice on all aspects of construction claims. Judge Curcio joined ADR Systems in April, 2018, after more than 15 years as a judge in the Circuit Court of Cook County, and spent the last eight years on the bench hearing construction cases, especially Mechanics Lien claims. She is a member of the ISBA Construction Law Section Council and of the Society of Illinois Construction Attorneys.

Construction projects unavoidably breed disputes; resolving those disputes timely and efficiently is crucial to your bottom line. Non-payment when work is complete, claims of defective work, costly delays, claims for extra work with unsigned change orders, design issues — these are just some of the issues in construction projects that lead to lawsuits. The subcontractor who has not been paid or who is dragged into a lawsuit is sure to be frustrated and angered by the amount of money and time drained from business in the course of making or defending claims.

Litigation seems to feed on itself and, it can be a black hole that sucks money and energy from you and your business. The usual plodding pace of litigation is now slower still because courts have been crippled by Covid 19. Trial dates for cases decided by judges are extended well into 2021 and beyond. In most areas, jury trials are not being scheduled at all. What is the subcontractor who has not been paid or has just been sued supposed to do? Call your attorney to make sure your rights are preserved. Then consider mediation.

Perhaps you can work things out with the other parties on your own. When you cannot, hire a mediator—a neutral third party whose job is to help the parties communicate and negotiate. Odds are that you are better off working with a neutral 3rd party mediator than finding yourself mired in prolonged litigation over a dispute.

One of the most important differences between litigation and mediation is that a judge or a jury decides the outcome of litigation; the parties control the outcome of mediation. Mediation allows the parties to craft creative solutions to disputes rather than having a decision imposed upon them. The outcome of a lawsuit is public. An agreement reached through mediation can be kept private and confidential. The cost of mediation pales in comparison to the time, money and emotion expended in litigation.

Construction law attorneys recognize the value to clients of mediation, and your attorney is the best resource to help you through the process. The first thing he or she can do is work with other attorneys to reach an agreement to mediate.

The next crucial step is choosing a mediator. Your attorney understands construction and construction law. The mediator in a construction dispute should, too. In preparing for the mediation, you and your attorney will have to educate the mediator about the facts and circumstances of the case. It will be a far more efficient process if you do not have to start by explaining to the mediator what a 2 by 4 is. And your attorney should not have to educate the mediator about the Illinois Mechanics Lien Act or explain what "substantial completion" means.

The mediation session is likely to be scheduled for an entire day. In complex disputes, it can be more than one day. Take this time away from business with the goal of saving hours and days (and attorneys' fees) that would be spent in a lawsuit.

One of the most difficult things about mediation is setting aside the natural anger that arises in any dispute. Few claims—especially construction claims—are one-sided or black and white. The mediator is there to help the parties get past the anger and frustration, and to help to honestly assess the risks and costs of not compromising. The mediator will not take sides or decide the case, but he or she can help all participants understand the benefits of reaching a settlement.

Construction claims can be resolved through mediation. Use mediation to save a business relationship, save time and money, to reach a final agreement and to keep your agreement confidential. Get out of the courtroom and back to work through mediation. ■

Illinois Department of LABOR

CERTIFIED PAYROLL

IL Department of Labor Director Michael D. Kleinik

In January 2019, Governor JB Pritzker designated Michael D. Kleinik as Director of the Illinois Department of Labor (IDOL). On May 31, 2019, the Illinois Senate voted unanimously to confirm Kleinik in his role as director.

Kleinik has a long career of public service and service to the labor community. He began his public service as a deputy sheriff in Bond County in 1979, also serving as a police officer in Vandalia, IL throughout the 1980s. He later was twice elected as Fayette County sheriff, serving from 1990 to 1998.

Following his service as sheriff, Kleinik moved on to fill the role of Field Supervisor Midwest Region Foundation for Fair Contracting Midwest Region Laborers' District Council. Following his four years of service with the District Council, Kleinik was named manager of the Illinois Department of Labor's Conciliation and Mediation Division. He also served as IDOL's chief of staff from 2006 to 2008.

In late 2008, Kleinik became Executive Director Chicago Laborers District Council – Labor Management Cooperation Committee, where he served until 2018. Kleinik then served as Executive Director of the Medical Cannabis Alliance of Illinois and registered lobbyist for the alliance before being asked to serve as IDOL director by Governor Pritzker.

The Illinois Department of Labor is reminding contractors who perform construction work on public works projects in Illinois that they must file their certified payroll with the department. Public works projects include any construction work funded in whole, or in part, by state or local public tax dollars.

In 2018, the Illinois General Assembly passed legislation to make changes to the certified payroll portion of the Prevailing Wage Act. When Governor Pritzker took office in 2019, SB 203 was signed into law (PA 100-1177). Prior to the law, certified payrolls were submitted to the local or state public body funding the project. Under the new law, the Illinois Department of Labor is charged with developing and maintaining an online portal where all prevailing wage construction contractors file their certified payrolls with the department, otherwise known as Certified Transcript of Payroll portal.

The Illinois Department of Labor recognizes that there have been bumps in the road in implementing the new law. That being said, our staff has worked nights and weekends to streamline the portal for contractors. In addition, we have held multiple trainings on this new law, and we have and will continue to answer all questions that come into our department. We are here to help contractors come into compliance with the law.

The main portal page to file certified payrolls can be found at here.

Questions and Answers

Q. How do I know if my project should be reported to the Illinois Department of Labor certified payroll?

A. *Every contractor should review their contract to remain in compliance with the law. If your contract says it is "subject to the Illinois Prevailing Wage Act and other applicable laws", you must submit certified payroll to the Illinois Department of Labor. If your contract mentions "Davis-Bacon", you do not need to submit certified payroll to the department.*

Q. What is the difference between "net" and "gross" wages?

A. *Gross pay is total amount paid before taxes and deduction, net pay is after tax and other deductions.*

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Questions and Answers *continued from page 8*

Q. What are "non-prevailing wage hours" and why do I have to report them?
A. *"Non-prevailing wage hours" are any hours worked on a project, outside of the public works project that you are reporting on for your certified payroll. Non-prevailing wage hours can be another public works project. The Illinois Department of Labor requires this information to ensure that employees are receiving the proper wage rate, and overtime wages.*

Q. If I make a mistake on a payroll, can I make a correction to it?
A. *The answer is no. Once a payroll is submitted, we cannot allow corrections to it. If you discover a mistake in your payroll, please re-submit the payroll in its entirety and we will consider you latest submission as your official certified payroll.*

Q. How can I save my information in the portal?
A. *Right now you cannot, we do hope to add that feature and have that update soon.*

Q. How do I know if my project is funded by "Rebuild Illinois" or state capital funds?
A. *State agencies are going to begin inserting this language in contracts. Contractors should assume that any contract with a state agency (i.e. IDOT, CDB, DNR etc.) is part of a state capital project fund and mark the box in the* portal.

Q. What if another state agency requires similar information, do I have to fill this out twice?
A. *It is possible that other state and federal agencies will require similar information. We are working with many of them to streamline the process and share information so that you don't have duplication of work.*

Q. What if I have an employee that works on the project in different classifications and wage rates?
A. *Please enter that individual in the payroll for each classification worked.*

Q. Will you be adding a "final payroll" checkbox to the portal to note the last payroll for a project?
A. *No*

Q. If I am a sub-contractor and I have always turned my certified payroll into the General Contractor, can we continue that practice?
A. *You may continue that practice; however, the department recommends that every contractor file their own certified payroll. Ultimately, liability falls with the individual contractor.*

Q. If I am a General Contractor, can I log-in to the portal to verify my sub-contractors have filed their certified payroll?
A. *No. When contractors file certified payroll with the department, they will receive a .pdf copy of their submission to IDOL. General Contractors may request a copy of that email.*

Q. Does the public body in charge of the project know that a contractor is complying with certified payrolls?
A. *No. When contractors file certified payroll with the department, they will receive a .pdf copy of their submission to IDOL. Public bodies may request a copy of that email.*

Q. What if my payroll period doesn't run Monday through Sunday?
A. *Simply plug your days in the same way. If your payroll runs Thursday through Wednesday, start your hours on Thursday and run through Wednesday. Total your hours after that is done. The excel template order cannot be changed.*

Q. What if our payroll period is two weeks?
A. *Calculations will have to be made to determine the gross pay in week one versus two. For net pay, should be reported on the second week of payroll.*

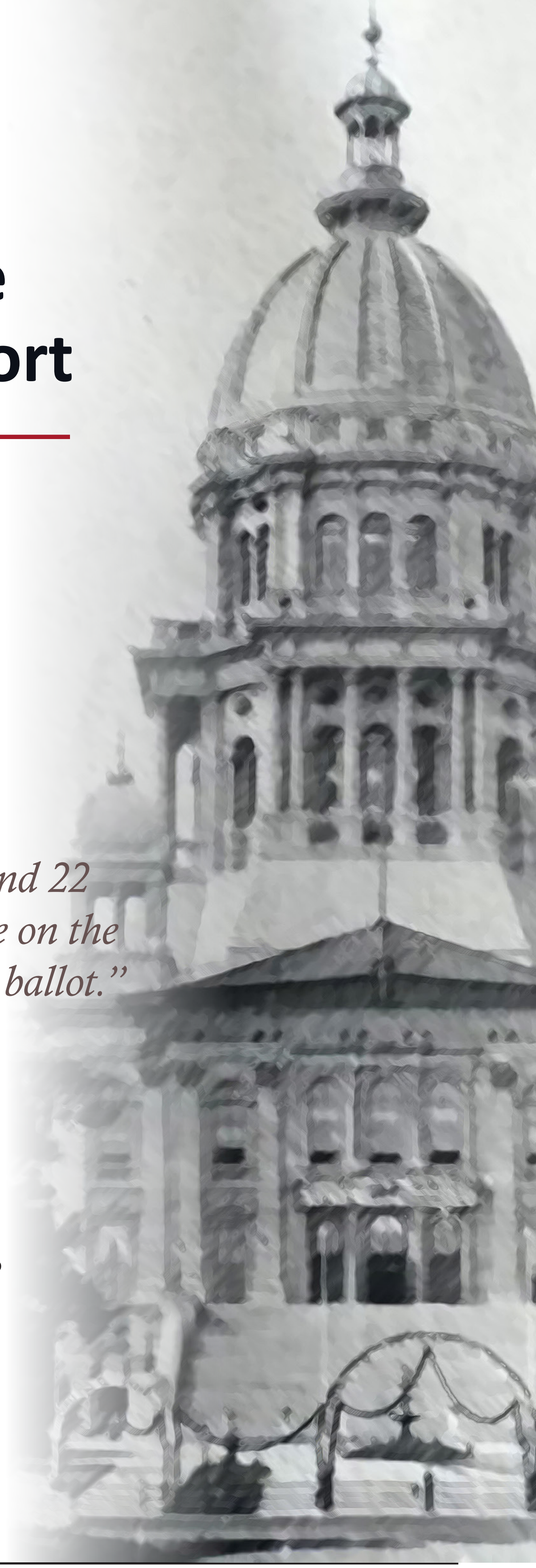
Q. What if I don't know the veteran status or race/ethnicity of our employees?
A. *Ask your employees, the Illinois Prevailing Wage Act requires the information.*

Q. Can I upload multiple projects in the excel file?
A. *No, certified payroll must be submitted by each individual project.*

Q. What if I am entering payrolls for two different companies, do I have to have separate log-in accounts for each?
A. *Yes*

Q. Do I have to file certified payroll during weeks we did not work on the project?
A. *No. But we would caution that some General Contractors like their subs to file no work reports, and public bodies do as well. The department does not require it though.*

Illinois State Capitol Report



JESSICA NEWBOLD
IMSCA
Executive Director

The 2020 General Election served up a few surprises for both Democrats and Republicans in Illinois. Leading up to Election Day, Illinois Democrats were confident that President Donald Trump's unpopularity with suburban voters would result in a greater majority for the party. Republicans successfully beat the anti-Madigan drum for weeks, and Democrats simply could not escape Speaker Madigan's unpopularity statewide. Anti-Madigan messaging, the ongoing Commonwealth-Edison federal corruption investigation

> *"All 118 House seats and 22 of 59 Senate seats were on the 2020 General Election ballot."*

that recently led to the indictments of four individuals with very close ties to the Speaker, combined with a better than expected voter turnout for President Trump, created a disappointing night for Illinois Democrats who were hoping for a Democratic sweep across Illinois. The use of Speaker Madigan's name and reference to the "Corrupt Madigan Machine" was used to defeat Democrats across the board; including candidates for the Illinois General Assembly, the Supreme Court and Congress.

All 118 House seats and 22 of 59 Senate seats were on the 2020 General Election ballot. 52 House and 11 Senate seats were uncontested this year; which left a handful

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House of Representatives - Photo by Daniel Schewn

of competitive districts throughout the state. House Democrats targeted many suburban districts hoping to propel the party to an even greater supermajority in the House. Despite dumping over $10 million dollars in these areas, Democrats failed to pick off GOP Representatives Brad Stephens (20th District), Mark Batinik (97th District), Deanne Mazzochi (47th District), Dan Ugaste (65th District), Amy Grant (42nd District) and Tom Morrison (54th District). However, the House Democrats successfully flipped three GOP seats - Representative Grant Wehrli (41st District) was defeated by Janet Yang-Rohr, Representative Allen Skillicorn (66th District) was defeated by Suzanne Ness and Representative John Cabello (68th District) was defeated by Dave Vella.

House Republicans were able to flip four seats - Representative Diane Pappas (45th District) was defeated by Seth Lewis, Representative Monica Bristow (111th District) was defeated by Amy Elik, Representative Nathan Reitz (116th District) was defeated by David Friess and Representative Mary Edly-Allen (51st District) was defeated by Chris Bos.

With 11 Senate seats on the ballot this year, the strategy for both Senate Democrats and Republicans was to maintain their current seats; and of course to try to pick up seats where possible. The Senate Republicans lost one seat this election cycle; the 25th District which was vacated by State Senator Jim Oberweis who sought election to the United States House of Representatives. Senate Democrats were laser-focused on successfully flipping this district and heavily funded Representative Karina Villa (D-West Chicago) who defeated Republican challenger Jeanette Ward.

Now that the final election results are in, it is clear Illinois Democrats held on to their super-majorities in both chambers. The House Democrats now hold 73 seats and the Senate Democrats hold 41 seats. Although Democrats remain the majority party in both chambers, leadership in both the Illinois Senate and House may look a little different when legislators return in January. Days after the November election, Senate Republican Leader Bill Brady announced he would not seek re-election as the Senate Republican Leader. His successor will be Senator Dan McConchie (26th District) and Senator Sue Rezin (38th District) will serve as Deputy Republican Leader. Senate President Don Harmon will likely remain in his position, as well as House Republican Leader Jim Durkin. However, Speaker Madigan is not standing on solid ground to maintain his position of Speaker. Many Illinois Democrats blame Speaker Madigan for the party's inability to win additional suburban seats and for losing a few seats in the Illinois General Assembly and even Congress. The growing feeling among Democrats is they can no longer ignore the growing unpopularity of Speaker Madigan. In addition, as more details are released and the federal government hands out indictments in the Com-Ed bribery scheme – House Democrats have began stating publicly that they do not intend to vote for Michael Madigan as

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Speaker of the House when legislators return in January for the 102nd General Assembly. Speaker Madigan needs 60 votes to maintain his position. So far, 19 House Democrats have publicly announced they will not support him; which leaves him 6 votes short of the needed 60. A lot of things can change between now and January, but the possibility of a new Illinois House Speaker is starting to emerge.

The graduated income tax constitutional amendment was handily defeated by ten percentage points; which was also tied to the anti-Madigan message. To become part of the Illinois constitution, the amendment needed to be approved by 60% of the people voting on the amendment or receive over 50% of the total votes cast in the election. The defeat of the proposed amendment is a setback for Governor Pritzker, who contributed millions of his own wealth (estimated at nearly $60 million dollars) in support of the amendment. Moving Illinois from a flat income tax rate among all wage earners to a graduated income tax system was a major cornerstone of Pritzker's "Think Big" agenda, and he campaigned hard on the issue during his gubernatorial campaign.

If the amendment had been approved, the new tax rates were estimated to raise an additional $3.4 to $3.5 billion in revenue for the state. Proponents argued this additional revenue is badly needed to cope with ongoing pension debt, our decades long bill backlog, and decreased revenues as a result of the coronavirus pandemic. Opponents of the "Fair Tax" ignored these arguments and tapped in to voters distrust in state government. The opponents raised issues such as "a graduated income tax will make it easier for lawmakers to raise income taxes on all income levels in the future; including the middle class." Opponents also raised the possibility of taxing retirement income as a key justification to reject it. The proponents' messaging was less focused, and they were unable to prevail against the "don't trust the politicians to do the right thing" message from the opposition.

> *"A lot of things can change between now and January, but the possibility of a new Illinois House Speaker is starting to emerge."*

In the wake of the defeat of the "Fair Tax", Governor Pritzker stated addressing the state's fiscal challenges remains a top priority for him. The anticipated budget deficit for FY 20 that ends on June 30, 2021 is $3.9 billion, and the projected budget deficit for FY 21 is $4.8 billion. The governor stated it will be necessary to reduce discretionary spending by 15% across the board, but the fear is that budget cuts alone cannot resolve our state's structural spending imbalance. Governor Pritzker has also warned that "all options are on the table" to address the projected budget deficit. Possible options lawmakers may consider to increase revenue include raising the flat income tax rate for all wage earners, closing up corporate tax loopholes, removing tax incentives and imposing taxes on services. In short, every tax idea, good or bad, that has ever been proposed may be back on the table for consideration. None of these options are ideal, and all of them present political risk to not only Governor Pritzker, but all members of the Illinois General Assembly. Even though Democrats are the majority party in the Statehouse, all members of the Illinois General Assembly holds responsibility to move Illinois forward. Our state's budget situation has been exacerbated by additional spending that was necessary to deal with the coronavirus pandemic and an unexpected drop in revenues. Now more than ever, Illinois needs our elected officials to work with each other, the Governor and other stakeholders to find solutions to our state's fiscal instability. ■


Senate Chamber

Happy Holidays!

IMSCA Officers 2021-2023

Top row left to right:
Jessica Newbold Hoselton (IMSCA Executive Director)
Giuseppe Muzzupappa (Assistant Director NECA-Northeastern Illinois Chapter, IMSCA Immediate Past President)
Chad Fricke (President F.J. Murphy & Son, Inc., MCA Central IL, IMSCA President)

Center row left to right:
Jim Rohlfing (Saul Ewing Arnstein & Lehr, IMSCA General Counsel)
Todd Byxbe (Project Manager Miller Engineering Company, Eastern IA/Western IL MCA, IMSCA Secretary)
Karsten Pawlik (VP of Operations Alpine Demolition, ASA Chicago, IMSCA Treasurer

Bottom center:
S.J. Peters (Executive Director PCA of Greater Chicago, IMSCA Vice President)