I must admit to a certain amount of pleasure in the work we do with our legislators in Springfield. I find it reassuring and challenging. An old friend of mine told me something a long time ago and every now and then it comes back to me. He said, “When you get to the end of the rope tie a knot in it and hold on”. What he was encouraging me to do was to not give up and that’s good advice for all of us.

What does this have to do with IMSCA you may ask? Let me tell you of two occasions that were rewarding to me as well as a learning experience. Our Legislators are real people and they really care about the people they serve. That’s why it is so important to communicate with them.

Dave Syverson is a senator from my district. He is a leader in the Senate with a long record of service there. At IMSCA’s Lobby Day event, I visited him and he came off the Senate floor to see me. I asked for his support on our retention bill (SB 3052) and he had some questions. After our discussion he assured me that he would support us with his Yes vote. When we checked the voting record after the vote we found that he had registered a No vote. Even though the bill passed 37 to 16 I was disappointed in the fact that he had told me he would vote in favor of our bill and the record showed a no vote. I called him and he assured me that there was a voting error and the wrong button had been pushed. He also assured me he would correct it. I think it is important to let our Legislators know we watch the bills we are interested in and check the voting record.

Joe Sosnowski is a State Representative from my area. He serves on a committee that will make recommendations to the Governor on passage of the Retention bill (SB 3052). He had voted No when it came to the House of Representatives. Much of that was due to the lobbying efforts of the powerful Banking and Realtors Associations. Louie Maffioli, who is the local NECA President and an IMSCA board member accompanied me on a personal visit to Representative Sosnowski’s office and we asked that he make a positive recommendation to the Governor. He had many questions on the bill and we had a great opportunity to explain the bill and what it meant to contractors. We explained the hardship that it imposed on contractors that come onto the job at the very early stages. We also explained that minority, veteran and women owned construction companies and other start up contractors are severely penalized by this practice. Performance and payment bonds protect both owner and contractors. He asked for additional information and how this is handled in other states as much as 47 other states have retention laws on their books. The Capital Development Board and the Illinois Department of Transportation also have some helpful practices on the withholding of retainage.

He seemed interested in our side of the argument. I hope after our visit he will make a positive recommendation to the Governor. Perhaps now we have that Knot tied in the end of the rope.

That personal letter to the Governor may be the knot in the end of your rope. If you can get your employees to send a letter that also helps. Our combined efforts matter more than you can imagine. This is our state and, our business; why not let our elected officials know how we want our laws to read? Tie the knot, hold on, write letters and visit your Representatives. WE can make a difference. Don’t leave it all to the Springfield office. Many hands make a task easier.
FEATURED STORY
Retainage Reform Revisited
-James T. Rohlfing

JOSH WEGER
Protecting Prevailing Wages in Illinois

NICOLE WING & NICOLAS VERA
Drone Prone: Use of UAVs in Construction Brings Safety, Surveys...and Lawyers

JESSICA NEWBOLD
End of Spring 2018 Legislative Session Report
Illinois is the most recent in a number of states to consider legislation that modifies the practice of financing construction projects by, in part, withholding payments earned by contractors and subcontractors who have built it - retainage. The practice of retainage has been curtailed by the vast majority of states for public projects, private projects or both. In its last session, the Illinois legislature passed SB 3052, which restricts retainage. Now it is up to Governor Bruce Rauner to decide if Illinois should join the trend of states restricting retainage.

Illinois Senate Bill 3052 would restrict retainage to 10% for the first half of commercial construction projects and reduce it to 5% for the second half. Public projects and residential projects of 12 or fewer units are not affected by the proposed law. It is an amendment to the Contractor Prompt Payment Act, a law that already obligates contractors to remit amounts paid by owners, whether retainage or otherwise, to subcontractors within 15 days of receipt. The CPPA also imposes 10% interest on monies not paid timely and, importantly, it raises a presumption that invoices are valid if not objected to promptly in writing.

Of course, in the eyes of most contractors and subcontractors the need for retainage reform is obvious. Retainage reform is primarily to provide relief for cash flow problems caused by this outmoded industry custom. Holding retainage for a year or more from the beginning of a large construction project is a serious burden to many, especially smaller, contractors and subcontractors. While retainage is withheld, laborers, material suppliers and other expenses must still be paid, often with borrowed money on which interest charges are incurred. The cash crunch is felt hard by small and minority subcontractors, who frequently have less access to credit markets and are hampered by the diminished cash flow caused by withholding payment after all parties agree the work is properly performed.

The practice of retainage became common 170 years ago in a young construction industry when there were high profit margins, low contractor reliability and great volatility in building the country’s railroads. With few protections...
in place then for owners, and a 10% reserve being less than a contractor’s profits, retainage seemed a natural means to keep all of the players in check. Fast forward to the early 21st century -- with sophisticated project payment protocols, architect and bank inspections before periodic payments, and a solid yet highly efficient construction industry earning lean profits averaging 3% -- and 10% retainage is an unsustainable relic. Many states now recognize that retainage has become an unfair means to leverage smaller contractors and subcontractors into waiting for payments rightfully earned, well after they have paid their own suppliers and workers.

Business failures in the construction industry account for about 12% of all the business failures in the United States, with approximately 20% of all construction-related businesses eventually failing. Cash flow problems are a leading cause of failures among construction businesses. An effective way to address this problem is by decreasing retainage and increasing available cash for construction companies to survive and prosper.

The most compelling reason to address the retainage problem, however, is not to bolster the construction industry alone, but to realize greater economic efficiency for society as a whole. Though responsibility for borrowing required project capital may be shifted using retainage from the developer to the subcontractor, the capital is still required. If the amount of capital required for a project remains the same, while the cost to borrow the high retainage provision and thus decrease the developer’s borrowing costs, the mis-allocation of borrowing responsibility results in a higher total project cost to build. Additionally, according to some surveys, the cost of a construction project is reduced when retainage is reduced, because contractors and subcontractors submit higher bids to account for retainage. Many project owners, public and private, have already implemented the practice of reducing retainage to take advantage of the benefit of lower contractor bids. SB 3052 would serve to standardize that practice.

Opponents of SB 3052 claim to object because government should never prevent parties from any types of contracting. Resisting an effective law on the “principle” that government should never interfere with contracts between private parties cynically ignores all of the laws that do just that with great effect. Further, government regulation of payment processes has proven necessary to address developer abuses of retention in the modern construction industry. A prudent state government cannot abandon all tools available to fine-tune a complex economy and level the playing field for all participants in a construction project. A need by a specific industry, coupled with a compelling public policy interest, justifies relief from the legislature, especially if the proposed law is only a minor departure from existing practice and the result is to pay contractors and subcontractors closer to the time they complete their work.

Thus, the Governor should sign SB 3052 to curtail retainage to make Illinois construction projects more efficient and boost the strength of the construction industry for the benefit of Illinois’ economy as a whole.
JOSH WEGER leads the Foundation’s policy development, strategic planning, and research and analysis. Prior to joining the Foundation, he served as Deputy Director of the Illinois Capital Development Board. He has also held several positions with the Illinois Department of Commerce & Economic Opportunity, served with the Office of the Illinois Auditor General, and spent two years with the Illinois House of Representatives.

He has a bachelor’s in Economics and a master’s in Political Science, both from the University of Illinois Springfield.

The Indiana, Illinois, Iowa Foundation for Fair Contracting (III FFC) is a nonprofit construction industry organization guided by a board comprised of both labor and management trustees. The Foundation’s mission is to increase market share for responsible contractors, work opportunities for skilled craftsmen, and value for taxpayers. We pursue our mission with a comprehensive five-point program of procurement oversight, market share analysis, jobsite monitoring, legal/regulatory advocacy, and public policy education.

Our team consists of legal and policy experts as well as construction analysts who monitor local industry conditions and live in the communities they serve. Protecting prevailing wage laws is at the forefront of III FFC’s initiatives.

Over the past few years, Indiana, Wisconsin, West Virginia, Kentucky, and Michigan have repealed their prevailing wage laws based on the misconception that “the cost of building schools, highways, and other critical infrastructure could be trimmed by 20 percent by eliminating the local minimum wage-or prevailing wage on government funded construction projects.” On the contrary, research from the Illinois Economic Policy Institute (ILEPI) has demonstrated that repealing a prevailing wage law produces no cost savings and actually lowers worker wages. For example, after Indiana repealed its Common Construction Wage law, the wages of blue-collar construction workers decreased by an average of 8.5 percent at no benefit to the state’s economy.

ILEPI found the majority of research conducted over the past fifteen years has shown construction costs are not affected by prevailing wage. In ILEPI's study: The Economic, Fiscal, and Social Impacts of State Continued on page 5
Prevailing Wage Laws, Choosing Between the High Road and the Low Road in the Construction Industry, prevailing wage was shown to result in less reliance on public assistance programs because blue-collar construction workers earned an average of $3,289 more per year, which in turn generates income tax revenues and helps boost the economy.

ILEPI has also researched the impacts of prevailing wage on military veterans, who represent a large share of the construction labor force. Their research found that prevailing wage improves economic outcomes for veterans by increasing the annual income of veteran blue-collar construction workers by 7 to 10 percent as well as reduces veteran poverty.

In an effort to protect prevailing wage, each summer the III FFC participates in the Illinois Department of Labor’s (“IDOL”) annual prevailing wage survey. By law, IDOL is required to investigate and ascertain prevailing wage rates on public works construction for all trades in the 102 counties of Illinois. As part of the survey, the III FFC asks the members of the International Union of Operating Engineers, Local 150 to fill out construction worker wage and benefit statements. These statements ask members to report their hours for the month of June. The data collected is used as supplemental information for IDOL to consider in ascertaining prevailing wage rates. For the past three years, the III FFC has collected construction worker wage and benefit statements and the overall participation in the survey has been successful. Last year, the III FFC helped to collect more than 44,000 man hours for the month of June from all 102 counties in Illinois.

In addition to the prevailing wage survey, the III FFC helps to promote prevailing wage compliance with educational seminars, field operations, and outreach. Throughout the year, the III FFC hosts prevailing wage seminars to educate the public on the importance of prevailing wage. The big takeaway on the benefits of prevailing wage is that it protects local construction labor standards, decreases jobsite injuries, boosts productivity, increases incomes for construction workers – and does not increase total construction costs.

“ILEPI has demonstrated that repealing a prevailing wage law produces no cost savings and actually lowers worker wages”

THANK YOU
to everyone who supported IMSCA-PAC’s 2018 fundraising effort. With your continued generosity and support, $19,250.00 was raised for IMSCA-PAC! We would also like to congratulate our 2018 raffle winners! Those taking home prizes this year include:

**IMSCA PAC 2018 Raffle WINNERS!**

BEARS/HILTON GIFT CARD:  
> Bloomington Normal PHCC

BLACKHAWKS/HILTON GIFT CARD:  
> Rick Lundvall (PICRA)

CUBS/CARDS/HILTON GIFT CARD:  
> Mike Peterson, USA Fire Protection (ASA Chicago)

NASCAR DRIVING EXPERIENCE:  
> Bloomington Normal PHCC

CABELA’S GIFT CARD:  
> Rich Gelden (Northeastern IL Chapter NECA)

BEST BUY GIFT CARD:  
> Steve Boren (ASA Chicago)

COOPER’S HAWK GIFT CARD:  
> Daniel Krueger (MCA Chicago)
Drone Prone: Use of UAVs in Construction Brings Safety, Surveys…and Lawyers

The advent of unmanned aircraft systems—or drones—has not been without turbulence. Despite the numerous advantages drones offer commercial industries, the U.S. has been hesitant to fully-embrace these airborne, eight-engine, multirotor spiders. Instead, the public has been quick to highlight the potential insidious uses of drones, ranging from breaches of privacy to national security threats. But the cost-saving benefits of drone technology in conjunction with the fast-changing regulatory framework of the Federal Aviation Administration (FAA) serve to offset the risks associated with drones in the commercial space.

Of course, the risks associated with drone technology are highly plausible and should be appreciated. Drones are a new and novel technology. As such, the risk of liability is often difficult to assess as the relevant rules and regulations are constantly being updated. Moreover, drones may come with a hefty price tag; The price of a single drone unit itself is in the thousands and that is not including the additional cost of insuring the device in case of a crash, strong weather blowing it off course, or human interference. More importantly, the American public has expressed privacy and safety concerns since the inception of drone technology.

But the benefits drones provide are remarkable. Particularly in construction, drones can reduce the labor and time required to produce accurate site surveys, as well as eliminate the human error that can be involved in the surveying process by flying over the site and taking aerial photos. Moreover, thanks to the drones’ ability to safely enter spaces or equipment that humans cannot, the use of drones can provide real-time updates on safety violations or identify equipment deficiencies that would otherwise go undetected. Further yet, drones can

continued on page 7
deliver goods to a site aerially, which minimizes time spent on transportation and increases the accuracy of records regarding what has entered the site.

Even if one is unpersuaded that the benefits of drone technology outweigh its risks, the FAA has been quick to adapt and change its rules to curb the concerns surrounding drones while simultaneously giving drone technology great opportunities to enter commercial industries. Historically, the FAA burdened drone operators with a slew of highly restrictive regulations. Until 2016, the use of drones was banned for commercial use, except that the FAA would grant exceptions on a case-by-case basis through a rigorous application process. In 2016, the FAA passed regulations that allowed commercial use with restrictions such as requiring a certified operator who passed a written test, limiting commercial operation to daylight hours, within the operator’s line-of-sight, at speeds under 100 mph and altitude under 400 feet, and forbidding operators from flying over people and in certain restricted areas.

Today, in 2018, the FAA has become more lenient with unmanned air systems by allowing owners of certain smaller drone models to forego registration. Additionally, the agency is poised to announce a new rule that would clear the way for drones flying over people and remove the line-of-sight requirement after drone operators adopt “remote ID” technology which will allow authorities to remotely identify airborne drones to curb the public’s privacy concerns. These new regulations will open the door for the much-discussed package delivery drone operations.

With the benefits of drone technology quickly gaining recognition and the regulatory framework beginning to strike the proper balance between safety concerns and greater drone implementation, many start-ups are positioning themselves to satisfy the future demand for drone technology that will naturally follow from lowering their barriers to entry. Most recently, Deere & Co. and Kespry (a drone-tech start-up) have joined forces to offer their customers a more seamless process for using drones in construction. Deere will offer its customers Kespry Aerial Intelligence Systems for use on jobs across the globe. These drone systems aim to produce topographic analyses of potential construction sites to highlight potential problem areas and improve asset and material management with better monitoring.

As regulations continue to evolve, we can expect to see the use of drones on construction sites to increase, eventually leading toward drones taking over site management, diagnostics and contemporaneous project modeling—and even performing erection work.

We can also expect to see increased risk on construction sites that utilize drones. Additional insurance coverage will be inevitable—covering a host of risks such as a drone running out of battery and crashing, a drone operator losing control, sudden strong weather blowing a drone off course, human interference or drones colliding with other aircraft. The FAA will be watching companies’ use of drones and assessing fines for failure of regulatory compliance. For example, the FAA fined a company called SkyPan, which provides aerial photography for architects, for using drones too close to high-rises in Chicago and New York City. Lawsuits are also arising about the privacy concerns of a drone flying over personal property.

As the commercial use of drones begin to lift off, the public sentiment will inevitably shape the FAA’s approach towards regulating drones and the cost of drones may likely fluctuate in its earlier implementation stages. But the FAA’s trend toward leniency and the advancements made in drone technology will inevitably provide the opportunity drones need to demonstrate their growing value as a tool for productivity.

“Additional insurance coverage will be inevitable—covering a host of risk...”
Illinois lawmakers surprised everyone, including themselves this spring by adjourning session on time, with an approved budget that received bi-partisan support. This year’s adjournment was an event we haven’t seen in years – both Democrats and Republicans lauded the approved budget as a “win”. When budget negotiations first began, Governor Rauner demanded the General Assembly send him a “balanced” budget. The budget the Governor signed last month was described by him as a budget that “can be balanced” after “hard word and continued bipartisan effort”. This of course means that the budget isn’t balanced – but both sides believe it’s the most balanced budget Illinois has seen in a very long time. Estimates of the FY ’19 budget hole range from $600 million to $1.5 billion. The budget agreement that was reached this year was fueled by fatigue, legislators were tired of the ongoing fights and had no interest returning to their districts this year to face tired and angry voters without a budget agreement in place. Given the previous gridlock between legislators and Governor Rauner, the FY 19 budget agreement is the best anyone could hope for.
So what's included in the budget? Most important to the construction industry, the budget includes capital project spending. HB 109 includes the following:

- $53,775,000 to the Quincy Veteran's Home for piping replacement and water quality improvement projects. The Quincy Veteran's Home also received $250 million that was included in SB 3128 to build a new facility. The new facility will be a design build project.
- $172 million for the Obama Presidential Library in Jackson Park. This money will be used for various improvements including a new Metra station.
- $400 million in deferred maintenance.
- $100 million in statewide emergency spending.
- $75 million for higher education facilities and emergency projects.
- $30 million for the coliseum on the State Fairgrounds in Springfield.

The Illinois Department of Transportation received the following funding:

- $8.8 billion in IDOT capital re-appropriations for projects put on hold during the budget impasse.
- $2.9 billion in IDOT pay-as-you-go capital, including $2.2 billion for IDOT’s FY ’19 road program.
- $50 million for high speed rail projects and maintenance.

In other good news for the construction industry, IMSCA’s legislative initiative SB 3052 (retainage reform) passed both chambers this year. SB 3052 amends the Contractor Prompt Payment Act and allows retainage to be withheld at a rate of 10% until a project is 50% complete, then retainage must be reduced to 5%. In short, retainage can be withheld at 10% for the first half of a construction project and 5% for the second half. You may recall that IMSCA has made several attempts to adopt retainage reform legislation. Our success this year is due to our hardworking and passionate bill sponsors – Senator John Mulroe and Leader Luis Arroyo – in addition to all IMSCA members who contacted their elected officials and union leaders. While passage of SB 3052 is a huge success and win for IMSCA, our work on this bill is not done. The next step is to encourage Governor Rauner to sign the bill into law. I encourage every IMSCA member to send a letter of support to Governor Rauner asking him to sign SB 3052 in to law.

Other bills IMSCA worked on this year on behalf of the Illinois construction industry includes:

**HB 4268 (THAPEDI/MULROE)**
Amends the Home Repair and Remodeling Act by modifying language in the mandatory consumer brochure to inform consumers of their right to obtain a sworn statement from their contractor listing subcontractors and amounts due to them. This is an initiative of the IL State Bar Association and interested parties from the construction industry, including IMSCA, engaged on this issue. All interested parties negotiated an amendment that removed all opposition to this bill.

**HB 4324 (WELCH/LIGHTFORD)**
HB 4324 seeks to create a lien right for unpaid wages in the real and personal property of employers and those acting in interest of the employer. As proposed, the lien can be equal to the amount of unpaid wages to an employee. This bill generated heavy opposition from the business community. The business community including the Illinois Chamber of Commerce and the Illinois Retail Merchants Association negotiated an amendment to HB 4324; which removed all opposition to the bill. However, when the bill reached the Senate, the Senate sponsor (Senator Kimberly Lightford) amended the bill again. The Senate amendment unraveled the agreement that was reached in the House. When the bill was sent back to the House for a concurrence vote, the House voted “non-concur”. This is an issue that may be addressed in the upcoming fall veto session.

**HB 4363 (WOJCICKI JIMENEZ)**
This bill sought to require any contractor awarded a contract under the Business Enterprise for Minorities, Females and Persons with Disabilities Act to document the expenditures they make in their efforts to reach BEP goals. This bill would also allow the contracting state agency to have access to the company’s financial data for compliance purposes. Due to opposition from the construction industry, this legislation did not move forward this year.

**HB 4513 (CONYEARS-ERVIN/HASTINGS)**
HB 4513 sought an amendment to the procurement code to provide any project under a construction contract, at least 10% of man-hours performing construction services be performed by individuals who reside in areas of poverty. This bill would also require the Department of Central Management Services to annually release a list of areas of poverty that meet the requirements. HB 4513 passed the House, and did not advance in the Senate. IMSCA was opposed to this legislation.

**HB 4531 (MOYLAN)**
HB 4531 sought to amend the

*continued on page 10*
Public Construction Bond Act. This legislation would allow a county or municipality to require a cash bond, irrevocable letter of credit, surety bond or letter of commitment from a builder or developer to ensure completion of a project improvement – at the discretion of the unit of local government. HB 4531 was opposed by IMSCA and lost in the House on a vote of 45-62.

**HB 4774 (KIFOWIT)**

HB 4774 sought to amend the counties code in provisions that determine the lowest responsible bidder for materials, services, and equipment. It provides that if the lowest responsible bidder is a non-local company, but if more than one local company’s bid is within 5% to 10% higher of the lowest bid made by a non-local company, then the county board shall award the contract to the lowest responsible bidder among the local company bids. Local company is defined as being located in the contracting county or a contiguous county. IMSCA and our construction industry partners sought an amendment to HB 4774 to exclude the construction industry to remove our opposition. However, when HB 4774 was up for a vote in the House it lost on a vote of 42-46-8.

**HB 5593 (JONES/HARRIS)**

HB 5593 seeks to expand the use of the design build delivery model to local school districts. There are currently four design build laws in statute that include: the Capital Development Board, Public Building Commission, Chicago Park District and Park Districts. The Capital Development Board law was approved as part of a broad industry coalition and served as the template for the remaining statutes. Design Build is much different than the traditional design-bid-build model. In order for the design build model to be a successful delivery method for construction projects, an experienced owner with thorough knowledge of the construction process is required. For this reason, expanding the use of the design build model to local school districts causes concern to the Illinois construction industry. IMSCA along with our partners in the design and construction industry sought an amendment to HB 5593 to remove our opposition. The amendment language that was approved by the House includes:

- Creates a pilot program limited to only 5 projects statewide that could use the design build delivery model. The Illinois State Board of Education has to approve which school districts can participate. The ISBE would be the oversight agency.
- All projects using this delivery method must comply with the Illinois School Building Code.
- Language must be included stating that members of the design-build team – including contractors, subcontractors and consultants – may not be removed or modified unless certain circumstances occur; such as the firm is no longer in business or unable to fulfill its legal, financial or business obligations.
- An annual detailed report should be provided to the Illinois General Assembly on the status of projects procured using the design build model.

HB 5593 passed the House but didn’t advance in the Senate. This is another issue that may be addressed during the fall veto session.

The Spring 2018 legislative session was a busy one for IMSCA. All in all, it was a successful one for our association. Thank you to everyone who participated in our Calls to Action and provided feedback on legislation to help define our position on these bills. As stated earlier, it is important that all IMSCA members participate with our efforts seeking Governor Rauner’s signature on SB 3052. IMSCA staff thanks you in advance for your assistance with this very important last step for SB 3052.

The Illinois General Assembly will return to Springfield in November for fall veto session. If you have any questions regarding this information, please do not hesitate to contact Jessica Newbold by calling 217.523.4361 or jnewbold@boldnewstrat.com.
IMSCA staff would like to thank all IMSCA members for their support and assistance during the spring 2018 legislative session. We depended 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. In addition, thank you to everyone who attended IMSCA’s 2018 Lobby Day Event – and special thanks to the Finishing Contractors Association of Illinois for their generous support of IMSCA’s Lobby Day event. With over 60 contractors in attendance, 2018 Lobby Day was a huge success! We hope everyone enjoys a happy and successful summer.

Dan Allen (Executive Director, CISCO) provided Lobby Day attendees with an update on CISCO’s efforts to protect Illinois Prevailing Wage laws.

Tony Adolfs (Executive Director, SMACNA Greater Chicago), Jessica Newbold (Executive Director, IMSCA) and S.J. Peters (Executive Director PCA Midwest/Plumbing Council) discuss IMSCA legislative initiatives before heading to the Illinois State Capitol.

PCA Midwest contractors (right) along with CISCO Executive Director Dan Allen (2nd from left) discussed retainage reform with Illinois State Senator Michael Hastings (left) who supports SB 3052.

PCA Midwest Contractor Rick Kuhn (left) and John Baethke (right) met with Illinois Senator Sue Rezin outside of the Illinois Senate Chamber floor.

Photo credit PCA Midwest/Plumbing Council.