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

GOING ...GREEN?
Consider contributing to the Legislative P.A.C.

The contributions are used to support those candidates that support the industry objectives.

Name: ___________________________________________
Address: _________________________________________
City: __________________ State: ________ Zip: ________

☐ $50.00  ☐ $100.00  ☐ $250.00  ☐ $500.00

Mail your contributions to:
Illinois Mechanical & Specialty Contractors Association
925 South Spring Street
Springfield, Illinois 62704

A copy of our report is on file with the Illinois State Board of Elections.
Dear IMSA Members:

Greetings, Everyone,

I hope this letter finds everyone in good cheer at this Holiday time.

Have you heard the story of the “Grinch that stole Christmas”? I am thinking of a new title, “The Politicians that stole Christmas and everything else they could get their hands on.” This political year has been a very rough one. The Governor’s race was too close; and it bothers me that people put their personal issues ahead of the bigger picture concerning the State.

On the political scene: Items such as redistricting, tax increases, and the growth of socialism and the lack of tax dollars are going to be items we will be fighting in the years to come (how many, who can guess?).

As I try to think about what the future holds for the contracting business for our members, I am scared to think about what might be coming down the road. As a Contractor who did a lot of work for the CDB during the nineties, made a good profit and gave a good product in return, I am aware that we will never go back to that situation due to the following:

1. The State is broke.
2. The State overbuilt during the previous years.
3. Our manufacturing tax base is leaving Illinois on a regular basis.
4. Senate Bill 51 can dampen the prospects for Contractors to bid State work.
5. All of the above will force Contractors to raise their prices if

Presidents Message Continued on page 15
# Association Calendar of Events

## IL ASSOCIATION OF PLUMBING HEATING & COOLING CONTRACTORS

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN 7</td>
<td>CEU CLASS, HEARTLAND COMMUNITY COLLEGE, NORMAL IL</td>
<td></td>
</tr>
<tr>
<td>FEB 25</td>
<td>CEU CLASS, HEARTLAND COMMUNITY COLLEGE, NORMAL IL</td>
<td></td>
</tr>
<tr>
<td>MARCH 18</td>
<td>ILLINOIS PHCC EXPO &amp; EDUCATIONAL DAY, DRURY LANE CONFERENCE CENTER, OAKBROOK TERRACE IL</td>
<td></td>
</tr>
<tr>
<td>MARCH 19</td>
<td>ILLINOIS PHCC BOARD OF DIRECTORS MTG, DRURY LANE CONFERENCE CENTER, OAKBROOK TERRACE IL</td>
<td></td>
</tr>
<tr>
<td>APRIL 1</td>
<td>CEU CLASS, HEARTLAND COMMUNITY COLLEGE, NORMAL IL</td>
<td></td>
</tr>
</tbody>
</table>

## ILLINOIS CHAPTER NECA

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN 17-19</td>
<td>ELECTRI-INTERNATIONAL FOUNDATION MEETING, SCOTTSDALE AZ</td>
<td></td>
</tr>
<tr>
<td>JAN 23-26</td>
<td>DISTRICT 4 COUNCIL MEETING, PALM SPRINGS CA</td>
<td></td>
</tr>
<tr>
<td>JAN 27-28</td>
<td>NECA-IBEW BENEFITS CONFERENCE, NAPLES FL</td>
<td></td>
</tr>
<tr>
<td>MAR 7-9</td>
<td>ASSOCIATION EXECUTIVES INSTITUTE, SAN DIEGO CA</td>
<td></td>
</tr>
<tr>
<td>MAR 20-23</td>
<td>NECA MIDWEST REGIONAL CONFERENCE, FT. LAUDERDALE FL</td>
<td></td>
</tr>
</tbody>
</table>

## MECHANICAL CONTRACTORS ASSOCIATION OF CENTRAL ILLINOIS

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN 19</td>
<td>NEW YEAR SOCIAL, SANGAMO CLUB, SPRINGFIELD IL</td>
<td></td>
</tr>
<tr>
<td>FEB 23</td>
<td>BOARD OF DIRECTORS &amp; MEMBERSHIP MEETING, ISLAND BAY YACHT CLUB, SPRINGFIELD IL</td>
<td></td>
</tr>
</tbody>
</table>

## MECHANICAL CONTRACTORS ASSOCIATION OF CHICAGO

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN 25</td>
<td>REGULAR BUSINESS MEETING, MAGGIANOS, OAK BROOK IL</td>
<td></td>
</tr>
<tr>
<td>MAR 6-10</td>
<td>MCAA ANNUAL CONVENTION, MAUI HI</td>
<td></td>
</tr>
<tr>
<td>MAR 22</td>
<td>REGULAR BUSINESS MEETING, JOE’S STONE CRAB, CHICAGO IL</td>
<td></td>
</tr>
</tbody>
</table>

## NORTHERN ILLINOIS NECA

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN 12</td>
<td>“ANALYSIS OF CHANGES – 2011 NATIONAL ELECTRICAL CODE” SEMINAR, ROCKFORD IL</td>
<td></td>
</tr>
<tr>
<td>JAN 18</td>
<td>BOARD AND MEMBERSHIP MEETINGS, ROCKFORD IL</td>
<td></td>
</tr>
<tr>
<td>FEB 22</td>
<td>BOARD AND MEMBERSHIP MEETING, ROCKFORD IL</td>
<td></td>
</tr>
<tr>
<td>MAR 20-23</td>
<td>NECA MIDWEST REGIONAL CONFERENCE, FT. LAUDERDALE FL</td>
<td></td>
</tr>
<tr>
<td>MAR 29</td>
<td>BOARD MEETING AND INSPECTOR RECOGNITION DINNER, ROCHELLE IL</td>
<td></td>
</tr>
</tbody>
</table>

## PAMCANI

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN 13</td>
<td>PAMCANI BOARD MEETING &amp; LUNCH, SHAW’S CRAB HOUSE, SCHAUMBURG IL</td>
<td></td>
</tr>
<tr>
<td>FEB 18</td>
<td>4 HOURS C.E., ST. PETERS SCHOOL, ANTIOCH IL</td>
<td></td>
</tr>
<tr>
<td>MAR 16</td>
<td>PAMCANI BOARD MEETING &amp; LUNCH MEETING, MAGGIANO’S, OAK BROOK IL</td>
<td></td>
</tr>
</tbody>
</table>
Heat up, Cool Down and Go Green

by Deann French

Rarely a day goes by when we are not reminded of the importance of “going green.” We are encouraged to reduce, reuse and recycle. We are asked to examine our carbon footprint. And if we don’t know the inconvenient truth by now, we certainly should. And while some environmentally friendly trends do double duty—saving the earth and saving us money—not all can make that claim. One trend that is growing in popularity in both the commercial and residential construction arena is geothermal heating and cooling. But what, if any, are the benefits of this technology? And who is currently using it?

The answers are simply A: numerous and B: more Illinoisans than you think.

Though geothermal heating and cooling is not a new concept, it is often seen as one. But more and more architects and homeowners are realizing the benefits of going green when it comes to heating and cooling. Geothermal heating and cooling systems, once used mainly in commercial buildings, are now being used in residential construction with greater frequency. In fact, according to the U.S. Department of Energy, more than 50,000 homes a year are installing geothermal heating and cooling systems.

While the popularity of geothermal heating and cooling is relatively new, the technology itself is not. Geothermal heating and cooling has been around since the late 1940’s. Geothermal heat pumps work by using heat from the earth to cool or heat the home, building or institution. This works because the temperature just a few feet below the earth’s surface remains a steady 45 degrees F (7 Celsius) to 75 degrees F (21 Celsius).

Since the source of energy is natural there’s no worry about any hazardous effects to the surroundings unlike those that burn fossil fuels. There is no tax imposed and there is always constant supply. Additionally, through the American Recovery and Reinvestment Act of 2009, consumers can receive a onetime 30 percent tax credit on a complete ground source heat pump.

Geothermal heating and cooling is efficient, cost effective and quiet. Energy efficiency means less electricity costs which equal greater savings. In fact, it is around 70 percent cheaper than heating a home using electric heating, oil or petroleum gas. And while the initial investment in geothermal heating and cooling is around 30 percent higher than the conventional heating and cooling systems, the fact that two thirds of the energy received from this system is thermal energy makes it more economical. Within a few years the initial investment is usually recouped. Nearly all systems carry a 50-year warranty and operate at 50 to 70 percent higher efficiency than most other heating systems.

Another advantage of geothermal heating and cooling is it comes with little maintenance. No regular servicing or yearly checks are required. No hazardous chemicals are produced; no fuel tanks, flammable oil, or gas pipes are used.

And geothermal isn’t limited to new construction. Even older homes can take advantage of geothermal heating and cooling. With little modification to existing ductwork, retrofits can even be installed in homes on small lots. Don’t be fooled into thinking geothermal is primarily for residential projects. In fact, government facilities have to consider geothermal options. Commercial construction is trending toward the geothermal method as well, especially in Illinois. Schools looking to make the grade in economics are turning to geothermal as an alternative. According to Midwest Construction, a middle school under construction in Matteson, Illinois is expected to save $70,000 annually on heating and cooling costs by installing a geothermal system as part of a $21 million project. The upfront cost for the Matteson project is actually $440,000 greater with geothermal than conventional HVAC but the payback is expected to be realized in 6.3 years because of lower energy costs associated with geothermal.

“Illinois is trending towards more commercial and school installations of geothermal,” said John Frytag of...
the Geothermal Alliance of Illinois. “The big change I’ve seen in the geothermal market in the last 15 to 20 years is that it used to be mainly residential. In the last 5-7 years I’ve seen an increase in the number of commercial installations.”

Recent Illinois commercial construction projects which have chosen geothermal include, Lake Land, Kaskaskia, John Wood, and Rend Lake Colleges, Lincolnland Community College Taylorville Campus and even Lincoln’s Tomb.

According to Frytag, geothermal use in Illinois is greatest in the downstate area.” The Chicago market is 15 years behind downstate,” he said. One of the reasons for this is that urbanization makes geothermal use more difficult and more costly. However, Chicago area aside, Illinois has a much larger geothermal imprint than that of neighboring states Indiana, Wisconsin, Missouri and Kentucky.

If a building owner is open to considering geothermal, the best first step is a feasibility study based on a 20-year payback. Cost and energy issues should match an owner’s mission and level of commitment to going green. An experienced design team is able to show owners the long term benefits of geothermal heating and cooling, both economically and ecologically. And as data builds through time and case studies, contractors will grow more familiar with installation, reliability will become more evident and the use of geothermal systems will continue to grow.

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

Four Types of Geothermal Systems

Closed-Loop Horizontal System
Generally most cost-effective for residential installations, especially new construction provided enough land is available. Two pipes are used—one buried at 6 feet and the other at 4 feet, or two pipes placed side-by-side at 5 feet in the ground in a 2-foot-wide trench. Installation is simplest.

The Closed-Loop Vertical System
Requires less land availability. Good for commercial buildings. Uses two pipes buried 20 feet apart and 100-400 feet deep, connected at the bottom with a U-bend to form a loop. The “vertical loops” are connected with horizontal pipe placed in trenches—often under commercial parking lots—and connected to the heat pump in the building.

Pond or Lake Closed Loop System
Takes advantage of existing body of water. Uses a water-source heat pump. A pipe is run underground from the building to the water at least 8 feet under the surface, in order to prevent freezing.

Surface Body Water/Open Loop System
Takes advantage of available water sources. Is less expensive to install. This water circulates directly through the heat pump system, absorbing the temperature below the earth, then returns to the ground through the well, a recharge well, or surface discharge.
The election is over and it’s time for the Legislature to get back to business. Although there was a tremendous change in the political makeup of the U.S. Congress those results didn’t transfer to the Illinois General assembly. In Illinois there were some modest gains for the Republican Party in both houses however the Democrats will still control the House and Senate as well as the Governor’s office.

As I pointed out in the last SubStance, redistricting would be one of the significant issues on the legislative agenda this year. Now that we know the Governor’s office will remain in Democratic hands we can be assured the new legislative maps and congressional maps will be drawn to favor the Democratic Party.

As the New Year comes the legislature must begin to deal with the state’s growing budget deficit. With an estimated $13 billion deficit there are serious questions about how the problem will be addressed. Options are fairly limited but at the present time it simply appears a matter of how big of a tax increase we will have and how much will be cut from the state budget. There is also some feeling that portions of the problem can be addressed by borrowing, but the incoming State Treasurer and Controller are both Republican. With that added to the mix the borrowing will have to stand a more difficult test of acceptance.

In matters related to construction the House and Senate have established bipartisan committees to take testimony on the workers compensation problems in Illinois. There are currently 5 hearings scheduled and when the hearings are completed it is expected that some reworking of the current law will be undertaken.

There is currently $30 billion worth of construction bonding authority available for Capital projects. The use of these funds is currently unresolved because of authorization of funding issues.

On January 1st the new ethics legislation becomes effective and with it contractors will see a possible reduction in communications from State agencies because vendor contacts must now be documented and updated on a daily basis. The implementation specifics are still not finalized but when the information becomes available it will be shared with your associations.

Please have a prosperous New Year.
A Comparison of the Illinois Public and Private Prompt Payment Acts

by Margery Newman
Deutsch, Levy & Engel Chtd.

Illinois has two Prompt Payment Acts that apply to the construction industry. The first is the State Prompt Payment Act, which applies to any State official or agency authorized to provide for payments from State funds for "goods or services furnished to the State". Beginning in 1993, the Public Prompt Payment Act was amended to provide for payment of interest when a State official or agency was late in payment of a vendor's bill or invoice for goods or services furnished to the State. Under the Public Act, any "proper bill or invoice" for construction work must be paid within 30 days of receipt. In the event that payment is not issued within this thirty (30) day period, an interest penalty of 2.0% per month (24% per annum) of the amount approved but unpaid is to be added for each month (or a fraction thereof) to the amount owed until final payment is made.

For those in the construction industry, the thirty (30) day period for payment begins to run when a bill or invoice has been “submitted”. The State agency must give notice no later than thirty-days after the bill or invoice is first submitted that the bill or invoice contains a defect making the State agency unable to process the payment request. The notice must identify the defect and any additional information necessary to correct the defect. Additionally, if one or more items on a construction related bill or invoice are disapproved, but not the entire bill or invoice, then that portion of the bill that is not disapproved, must be paid.

Once the general contractor receives payment from the State agency, the general contractor must pay its subcontractor within fifteen (15) days. Interest on a delayed payment to a subcontractor is also set at 2% per month (24% per annum). Subcontractors who fail to pay their suppliers within fifteen (15) days of being paid are also liable for the payment of interest.

Any claim for interest under the Public Prompt Payment Act must be brought before the Illinois Court of Claims. The Court of Claims is a difficult court in which to maneuver and many contractors have found the Public Prompt Payment Act to be ineffectual. Moreover, any subcontractor who is owed money must make a claim to the State agency overseeing the payment and then the State agency must hold an administrative hearing.

The second prompt payment act is the Private Construction Prompt Payment Act. This Act seems to be having some impact in the construction industry. The Private Construction Prompt Payment Act went into effect on August 31, 2007 and covers all private construction contracts, except those involving single family residences or multi-family residences of less than 12 units.

Under the Private Construction Prompt Payment Act the owner must approve or reject a pay application within 25-days of its receipt. Additionally, the application for payment is deemed approved if the owner takes no action within this 25-day period. If the owner approves the pay application then payment must be made by the owner within 15-days of the approval. If the owner rejects a pay application, the owner must provide a written statement of the amount withheld and the reasons for withholding payment of money within the original 25-day period. Furthermore, the owner must only withhold the reasonable value of the work “not in accordance with the contract.” All other payments must be made.

Once payment is received by the general contractor from the owner on account of a pay application, then the general contractor may pay each of its subcontractors within 15-days of receipt of payment. In the event the general contractor fails to pay the subcontractor within that 15-day period, then the subcontractor may suspend work after providing seven (7) days written notice and seek ten percent (10%) interest on the unpaid money.

What does this mean for contractors and subcontractors? First, the contractor may not withhold any more retention from a subcontractor than the owner is withholding on account of that subcontractor (i.e., the contractor must pay everything it receives on account of that subcontractor). Second, if a contractor discovers nonconforming

Continued on page 10
Avoiding Surprise and Prejudice to Lien Claimants

The Illinois Mechanics Lien Act, 770 ILCS 60/1 et. seq. (the “Act”), is designed to provide a remedy to contractors, subcontractors and suppliers who furnish labor or materials for nonpayment. The Act seeks to carefully balance the rights of property owners against those who furnish work on credit; it aims to not surprise an owner with an unwarranted lien, while not prejudicing a contractor’s ability to pursue payment through a lien against the property. After all, their work and materials, and those of their subcontractors and suppliers, have enhanced the value of the property and benefited the owner.

One section of the Act, which has fallen out of balance and is in need of a minor repair is section 34. This section provides that a demand may be served on a party asserting a lien, who must then move to foreclose his lien within 30 days or lose his right to do so – “fish or cut bait.” The purpose of this section is to permit an owner, or others with an interest in real property, to force the issue of the validity of a lien claim already filed, and to clear any potential cloud created by a lien against the owner’s property. Section 34 is an important protection for owners who are troubled by unenforceable or invalid liens, allowing them to quickly and easily dispose of them with a simple notice. Essentially, it serves a valuable purpose and should remain the law in Illinois.

Unfortunately, while other sections of the Act specify both the contents and form for a written notice affecting lien rights, section 34 provides little guidance about what must be included in a demand or what form it must take. In an effort to understand legislative intent, some court decisions have carried the remedy too far and decided that even notices and other documents making no mention of section 34 or of a requirement to take action within 30 days may cause a surprising loss of lien rights. Unfortunately, this has resulted in contractors and subcontractors losing the right to enforce valid and just liens because they are unaware that steps must be taken within 30 days to preserve the lien. Thus, though a contractor or subcontractor has carefully followed all of the sometimes difficult steps necessary to properly perfect a mechanics lien claim under Illinois law, the lien is subject to unexpected forfeiture based on an ambiguous and misunderstood notice.

Illinois courts have liberally construed section 34 to terminate a claimant’s lien rights, even though the notice served makes no reference to section 34 or to the consequences if a suit is not promptly filed to enforce the lien. See, Vernon Hills III Ltd. Partnership v. St. Paul Fire and Marine Ins. Co., 287 Ill.App.3d 303, 678 N.E.2d 374 (2nd Dist. 1997). This has created an unfair trap for unsophisticated lien claimants.

At least one Illinois trial court recently decided that when a lien claimant was served with merely a summons and complaint in a mortgage foreclosure case, all lien rights were lost because the unknowing recipient did not file an answer to the lawsuit within 30 days. Neither the summons nor the complaint gave any warning that the lien would be lost if an answer was not filed within that time. The trial court seems to have based its decision, at least in part, on the appellate court case of Charter Bank and Trust of Illinois v. Edward Hines Lumber Co., 233 Ill.App.3d 574, 599 N.E.2d 458 (2nd Dist. 1992). Though the holding in that case did not directly support the trial court’s ruling, other language in the opinion gave implied support. The appellate court held that a mechanics lien claimant did not forfeit its lien by failing to file a counterclaim to foreclose it within 30 days after receipt of summons in a mortgage foreclosure suit brought by a mortgagee. But, in explaining its ruling, the court wrote:

The plain language of the section requires that “[u]pon written demand * * * requiring suit to be commenced * * * or answer to be filed in a pending suit, suit shall be commenced or answer filed within 30 days thereafter.” (Ill.Rev.Stat.1989, ch. 82, par. 34.) The summons required only that Hines file an answer within 30 days. It is not disputed that Hines received the summons on March 14 and filed an answer on April 12. Hines complied with the statute. Nothing in section 34 specifies any particular content for the answer which is filed. More importantly, nothing in the language of the section required that Hines assert its lien within 30 days when the summons required only the filing of an answer. When Hines filed its answer April 12, it did all that was required to preserve the lien.

Continued on page 11
work or any other reason for withholding money from a subcontractor, the contractor must not draw that money from the owner, or if it has already drawn and received the money, the contractor must return the disputed money to the owner. Third, the contractor should be very hesitant to set off money that it receives on one contract owed to a subcontractor against the subcontractor’s debt on another subcontract. Fourth, even though the Private Act permits a subcontractor to stop work, this is a drastic step and should only be used sparingly and with consultation with a construction attorney.

There are currently some unanswered questions regarding the Private Construction Prompt Payment Act. First, some general contractors are putting clauses in their subcontract agreements stating that the subcontractor waives the provisions of this new Private Act. Second, title companies are maintaining that they are not bound by the Private Construction Prompt Payment Act. What happens then if an owner approves a pay application within the 25-day period but the title company fails to make the payment to the general contractor from the construction escrow. Another problem could arise if the lender refuses to fund the pay application because the loan is out of balance or some other owner/lender dispute exists.

The following chart sets forth a comparison of the Public Prompt Payment Act to the Private Prompt Payment Act.

**Comparison To Public Prompt Pay Act**

<table>
<thead>
<tr>
<th></th>
<th>Private Pay Act</th>
<th>Public Pay Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time for owner to approve or reject pay app.</td>
<td>25 days</td>
<td>20 days</td>
</tr>
<tr>
<td>Time for owner to pay</td>
<td>15 days after approval</td>
<td>20 days after approval</td>
</tr>
<tr>
<td>Time for contractor to pay</td>
<td>15 days from receipt of $$</td>
<td>15 days from receipt of $$</td>
</tr>
<tr>
<td>Retention</td>
<td>Contractor must pay everything received from owner</td>
<td>Contractor may withhold additional retention if provided in subcontract</td>
</tr>
<tr>
<td>Penalties</td>
<td>10% per year + stop work</td>
<td>24% per year</td>
</tr>
</tbody>
</table>
Id. 233 Ill.App.3d at 578. Based on the foregoing discussion, the Charter Bank court apparently construed section 34 of the Act to require that an answer to the complaint had to be filed within 30 days, or the lien would have been unenforceable. Therefore, mechanics lien claimants need to be concerned that not filing an answer to a complaint within 30 days will cause their lien to be forfeited.

To remedy this imbalance, the Act should require notices under section 34 to alert lien claimants to the necessity of responding to the notice within 30 days and notify them that if they do not respond, their right to enforce their lien will be forfeited. The following simple addition to section 34 would cure most of the surprise prejudice to contractors:

A written demand under this section must contain the following language in at least 10 point boldface type: “Failure to respond to this notice within 30 days of receipt, as required by section 34 of the Illinois Mechanics Lien Act, shall result in forfeiture of the referenced lien.”

This modest change to section 34 will not burden or otherwise jeopardize the rights of honest owners who are merely seeking to clear clouds on title, but it will minimize harm to lien claimants who, without such warning, might be surprised to lose their right to be paid for their work. It would not be difficult for owners and others seeking to clear title to comply with this new requirement. A simple letter to lien claimants would still suffice to trigger section 34 and eliminate the liens of any claimants who did not immediately enforce their rights. Generally, the law disfavors a loss of such important rights due to ignorance or inadvertent mistake. The rights of contractors who have enhanced an owner’s property with their own hard work and materials should not be lost by surprise tactics or ambiguous notices – that does not serve the ends of justice. Therefore, section 34 of the Mechanics Lien Act should be amended to add the above warning to section 34 notices to lien claimants.

Feel free to contact James Rohlfing with any questions or suggestions about the above at jrohlfing@rolaw.net.
An important tool in retaining employees is a quality benefits package. There are two major types of benefits: those that companies offer to all their employees and those offered only to key employees.

Benefits offered to everyone in the organization usually consist of traditional benefits such as retirement plans, health insurance and paid vacations. While these benefits may include certain tax breaks and other advantages to employers, businesses primarily offer them to recruit and retain employees. They are usually considered standard by employees in large organizations, and can be a determining factor in attracting employees to small businesses.

**Executive Benefits**

Executive benefits are designed primarily for highly-compensated employees and key people. They can give key individuals an incentive to stay at an organization and fill gaps where other benefits fall short.

**Non-Qualified Retirement Plans.** Unlike qualified retirement plans, non-qualified plans are not tax-advantaged in the current year. They are designed to retain top talent by providing a benefit in the future. In most arrangements, the employer can deduct benefit payments made to the employee at the time of payment and control the design of the benefit plan.

For employers, the advantages of a non-qualified retirement plan include having control over who participates, the contributions, the plan design and the timing of benefit delivery; and deductions on future benefits when paid to an employee. Employees benefit from additional retirement income.

**162(a) Bonus Plans** are often used as supplements to group term life insurance policies, enabling selected employees of C corporations to receive additional life insurance protection. The employer pays policy premiums as a bonus, which is treated as taxable compensation to the key employee, but tax-deductible by the employer. The key employee owns the policy and the cash value, and selects the beneficiary. Employers often pay the additional taxes due in the form of a cash bonus to the employee.

For employers, benefits include current tax deductions, control over the participants and the plan, and incentive for the employee to remain with the company. Employees benefit by owning additional life insurance, which can also be structured to provide additional retirement income.

**Split-Dollar Plans** have been popular as a method of paying for insurance by splitting the premium and insurance proceeds between the employer and employee. Changing tax law has reclassified many of these plans as loans, and they are prohibited to employees of public corporations under the Sarbanes-Oxley Act. While split-dollar plans still offer benefits to private companies, the complexity of the tax rules makes it imperative that the plan is designed with the help of an accountant or tax attorney. While not tax-deductible to employers, key benefits include the ability of the employer to recover some or all of the costs of the plan and key employee retention. For employees, benefits include affordable permanent life insurance protection and, in some plans, supplemental retirement income.

**Designing or Enhancing Your Benefits Package**

To help business owners make the most of your benefit offerings, the chart on the next page categorizes some benefit choices by their value to the employer. Items of value to an employer include: deductibility – the ability to deduct part or all of the cost of the benefit from business taxes; selectability – the ability to choose who is eligible to receive the benefit; and control – the ability to control the employer contribution amount, plan design and benefit delivery. Your financial professional can help you further outline your business and employee needs, and suggest appropriate strategies to help you meet them.

Once your business has examined benefit priorities, you can review different benefit options with your key employees. Your financial professional can help you compare the varying degrees of deductibility, selectability and control for each type.
### Designing or Enhancing Your Benefits Package

<table>
<thead>
<tr>
<th>Type of Plan</th>
<th>Deductible to employer</th>
<th>Employer Selects Participants</th>
<th>Who Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualified Retirement Plans</td>
<td>Contributions to fund benefits are tax-deductible when contributed by employer</td>
<td>No</td>
<td>Employer (within regulatory guidelines)</td>
</tr>
<tr>
<td>Non-Qualified Retirement Plans</td>
<td>Retirement benefits are tax-deductible to employer when paid to executive</td>
<td>Yes</td>
<td>Employer</td>
</tr>
<tr>
<td>162(a) Bonus Plans</td>
<td>Premiums are tax-deductible as paid by the employer</td>
<td>Yes</td>
<td>Employer</td>
</tr>
<tr>
<td>Split Dollar Plans</td>
<td>No</td>
<td>Yes</td>
<td>Employer</td>
</tr>
</tbody>
</table>

**Executive Benefits for Key Employees...**

Continued from page 12

AXA Advisors does not provide legal or tax advice. Please be advised that this document is not intended as legal or tax advice. Accordingly, any tax information provided in this document is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer. The tax information was written to support the promotion or the marketing of the transaction(s) or matter(s) addressed and you should seek advice based on your particular circumstances from an independent tax advisor.

This article is provided by Kent Dolenc. Kent Dolenc offers securities through AXA Advisors, LLC (member FINRA, SIPC) 4341 Acer Grove Drive, Suite 400C, Springfield, IL 62711 and offers annuity and insurance products through an insurance brokerage affiliate, AXA Network, LLC and its subsidiaries.
The Financial Accounting Standards Board (FASB) is a private entity made up of accounting professionals and whose purpose it is to establish accounting standards for the preparation of financial reports by nongovernmental entities. Why should you care about FASB? Because, on September 1, the group proposed sweeping new guidelines to generally accepted accounting principles (GAAP) which would require you to disclose the amount of your company’s potential unfunded liability for every multiemployer pension plan you participate in - regardless of whether you ever plan to withdraw from the plan. Thankfully, on November 10, FASB announced that they were postponing implementation of the new rules pending additional input. They have yet to announce any intention to kill the proposal.

For the time being, the current GAAP rules will remain in place. Those rules mandate that companies are required to disclose only their contributions to multiemployer plans unless there is a reasonable probability that you will be withdrawing from the plan. At the time of likely withdrawal, the company would need to disclose the estimated withdrawal liability. This is a clear and reasonable standard.

That same clear and reasonable standard dissolves under the now-delayed proposed new rules. Under the FASB proposal, among the information you would need to include on your financial statement for every multiemployer plan in which you participate is:

- The amount that is required to be paid upon withdrawal from the plan, as of the most recent date available;
- A description of the risk under which the company can be liable to the plan for other participating employers’ obligations;
- A description of any rehabilitation or funding improvement plans either in effect, or under consideration;
- Total assets and accumulated benefit obligations of the plan;
- Percentage of the company’s contributions relative to the total contributions to the plan;
- Percentage of the company’s employees covered by the plan;
- Percentage of the active and retired participants of the plan employed by the company;
- Future trends in contributions, if known, including the extent to which a surplus or deficit may affect future contributions; and
- Description of the contractual agreement that govern the contribution rates.

A number of mechanical and specialty national associations, local associations, union officials, benefit plan officials, accountants, lawyers and politicians weighed in under a massive lobbying effort to educate FASB on the damaging effects of these proposed new rules. Among those damaging effects:

- the withdrawal liability disclosure called for would be misleading information because of the time lag in plan valuations and financial statements;
- the disclosure of withdrawal liability as a contingency on the basis of a probability prediction is doubly misleading as it is at odds with legal rules pertaining to construction industry plans, where that liability is not incurred unless the audit subject has or specifically intends to go open shop in the area of any particular plan; and,
- the standard for disclosure in the FASB proposal was unclear and indefinite.

Continued on page 15
As a contractor, you may ask why this disclosure would be so damaging to you. The bigger issue besides the administrative cost and hassle to gather and report the information is consideration of how your bank loan officers and bonding representatives will respond to this plethora of confusing information that would be made an official part of your balance sheet through footnotes and background material.

Imagine, every year, having to request your share of unfunded withdrawal liability from virtually every fund to which your company contributes (even really well funded plans seldom are 100% funded). Then you would have to submit that information, along with the answers to all of the questions (and more) listed above, as a footnote on your financials. What if you have a dozen labor agreements and all of this “reporting” shows a total potential unfunded withdrawal liability (remember, in construction a contractor can basically only experience true liability if he leaves a plan and goes in business non-union in the same area within five years) of three million dollars? Loan officers have people that they report to – superiors, loan committees, stockholders, etc. Is that loan officer cheerfully going to ignore three million dollars in potential liability? Is he going to take the time to understand the area of law surrounding multiemployer pension plans, or will it be easier to refuse or reduce your loan request? Imagine facing this challenge with your bonding companies as well.

In the first quarter of 2011, FASB intends to provide some guidance on how they will proceed with the now-delayed rules. Until then, do not let this issue slide to the back burner. Talk to your union colleagues about this. Talk to your accountants, your bonding companies and your attorneys. Make sure they are aware of the problems with the proposal and the sweeping ramifications it would have on your business.

They decide to be involved in this arena. My question to you is: What needs to be done so that CDB can survive?

I almost drove off the road yesterday when the radio host on WLS stated that the State of Illinois was paying 23% on the monies that they were borrowing from a fund in New York. AND WE DON’T NEED TO GET THINGS UNDER CONTROL?!

There is even talk about the State filing for bankruptcy to get out from under pension obligations and to leave the bond holders stuck with not getting paid. I don’t know if they can do this; but this type of talk should make more people pay attention to what their elected officials are doing.

Let us turn our attention to positive thoughts: My hopes and prayers are that each person (in their own way) has enjoyed this Christmas Season. Please say a prayer for those in the Military and for their families that we can get them safely home.

Best Wishes for the 2011 New Year

P.S. Did everybody see that IMSCA endorsed candidates won 90% of the races where we made endorsements? NICE JOB BY THE COMMITTEE.
7065 Veterans Boulevard
Burr Ridge, Illinois 60527
(312) 384-1220 • (312) 384-1229 (fax)
www.mca.org

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION
www.illneca.org
William C. Belforte - Executive Vice President
E. Wes Anderson - President
Daniel M. Wilcox - Governor

Illinois Chapter, NECA Board Members

Alton-Wood River
Terry M. Buhs
Wegman Electric, Inc.

Bloomington
John E. Weber
Weber Electric, Inc.

Champaign-Urbana/
Streator-Pontiac
Lloyd N. (Bud) Allen
Bud Allen’s Electric, Inc.

Danville
E. Wes Anderson
Anderson Electric, Inc.

Midstate
Kenneth D. Warner
Egizii Electric, Inc.

Southern Illinois
Wayne E. Clinton
Clinton Electric, Inc.

Southwestern Illinois
Larry F. Glaenzer
Glaenzer Electric, Inc.

Springfield
H. Edward Midden, III
Mansfield Electric, Inc.

Chartered March 10, 1945