



SUBSTANCE

ILLINOIS MECHANICAL & SPECIALTY CONTRACTORS ASSOCIATION

SUMMER 2025



IMSCA LEADERSHIP

PRESIDENT



Karsten Pawlik is Vice President of Operations at Alpine Demolition Services, LLC (Alpine), a position he has held since 2002. Alpine is a selective, structural and infrastructure demolition company serving primarily the Chicagoland Area. Karsten has degrees in Civil Engineering from the University of Florida and an MBA from Northern

Illinois University. Karsten is past president at ASA Chicago, and a former board member of Fox Valley AGC and National Demolition Association.

VICE PRESIDENT



Todd Byxbe is the Vice President of Miller Engineering Company located in Rockford, IL where he has been employed for nearly 35 years. Todd serves on the National Board of Directors for the Sheet Metal and Air Conditioning Contractors National Association (SMACNA National). In addition, Todd serves as SMACNA

National Midwest Political Liaison where he is responsible for meeting with US Senators and Representatives to achieve continued growth for the construction industry and the advancement and influence of SMACNA.

TREASURER



Tammy Rich Stimson loves being a part of a 2nd generation family-owned business. Over her 27-year tenure at G.A. Rich & Sons, Inc., Tammy has been presented with many opportunities to grow both in the business and in leadership roles with the Illinois Plumbing Heating Cooling Contractors (ILPHCC). Tammy started her career as

an assistant project manager/estimator and bid runner. Over the years, she has worn many hats and held various positions such as Safety Director, Lead Estimator, and Chief Financial Officer; currently serving as the President of G.A. Rich & Sons, Inc. Working in a family-owned business has allowed her to be involved in PHCC at the local, state & national levels, including serving as Illinois' first woman president. Her service to the industry earned her the Larry Dore Member of the Year Award in 2011. Tammy also has a passion for serving others and does so through various organizations in her community. Her commitment to community service earned her the 25 Women in Leadership Award in 2013.

SECRETARY



Billy Serbousek has worked for the Illinois Chapter NECA since 2004 and took over as the Executive Director in 2012. There are 8 IBEW Local Unions within the jurisdiction of the Illinois Chapter covering Bloomington/Normal, Champaign-Urbana/Streator-Pontiac, Danville, Decatur, Springfield, Jacksonville and all counties south from east to west in the state of Illinois. He currently serves as Officer or Trustee of 8 trust

funds. He is also a graduate of the Institute of Organizational Management sponsored by the United States Chamber of Commerce as well as a graduate of the VOLT Academy. In addition he serves on 4 Local Labor Management Committees in their Danville, Champaign-Urbana/Streator-Pontiac, Southern Illinois, and Southwestern Illinois Divisions. Currently he is serving as the Co-Chair of the 2026 Electrical Expo of Missouri and Illinois hosted in St Charles, Missouri that is held every three years.

SPECIAL COUNSEL



James T. Rohlffing is a partner in the national law firm of Saul Ewing LLP, where he is a member of the firm's Construction Practice Group. He represents subcontractors and other participants in the construction industry in resolving legal disputes and protecting his clients' rights. He is editor of the highly-acclaimed and comprehensive treatise Illinois Construction Law Manual, published by Thomson Reuters. Mr.

Rohlffing is special counsel as well as the past president of IMSCA, the largest organization for subcontractors in Illinois. He is an active member of the ABA Construction Forum, the Society of Illinois Construction Attorneys (SOICA), the Chicago Bar Association's Construction Law committee, and the Association of Subcontractors and Affiliates of Chicago. He has drafted and assisted in passing Illinois legislation critical to the Illinois construction industry and he has testified on construction law issues before committees of the Illinois Legislature.

IMMEDIATE PAST PRESIDENT



S.J. Peters has served as Executive Director of the PCA of Greater Chicago & Plumbing Council since 2006. He previously was Communications Director for UFCW Locals 1546 & 881 for 16 years. A graduate of Loyola University Chicago, S.J. worked professionally in broadcasting, publishing and PR before launching a career in non-profits. He also currently serves on the Boards of CISCO and UAC. S.J. and his wife, Carrie, reside in Chicago's

western suburbs and are the parents of two grown daughters.

LEGISLATIVE REPRESENTATION FOR OVER 2,000 CONSTRUCTION EMPLOYERS

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Karsten Pawlik, President
Todd Byxbe, Vice President
Tammy Rich-Stimson, Treasurer
Bill Serbousek, Secretary
Jim Rohlfing, Special Counsel
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IMSCA

Illinois Mechanical & Specialty Contractors Association

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IMSCA Lobby Day 2025: **CONTINUED PROGRESS**

By Karsten Pawlik, IMSCA President // Photos courtesy of SJ Peters

As we move forward into 2025, I want to take a moment to reflect on the strength of our collective voice and the progress we've made together. The Illinois Mechanical & Specialty Contractors Association (IMSCA) continues to be a vital advocate for our members, ensuring that our priorities are heard in Springfield and beyond. From legislative tracking to PAC engagement and board collaboration, our shared commitment to advancing the interests of specialty contractors has never been more important—or more effective.

On May 6, 2025, IMSCA convened for

its annual Lobby Day in Springfield, Illinois. Approximately 30 attendees were present for the opening meeting, speaker presentations, and preparation for visits within the State Capitol. Consistent with previous years, the IMSCA members in attendance effectively advocated for the industry by discussing various pertinent legislative initiatives pending before the Illinois General Assembly.

Morning Meeting: IMSCA's Q2 Meeting

This year, the morning meeting was held at a new location: the offices of the Illinois



From left: Tammy Rich Stimson (IMSCA Board; GA Rich & Sons; IL PHCC); Dan Allen and Jennifer Rice (CISCO); Rick Kuhn (RJ Kuhn Plumbing & Heating; PCA First VP); Kelly Castrogiovanni (Terry Plumbing Co; PCA President); and Ashton Stimson (GA Rich & Sons).

Retired Teachers Association (IRTA). IMSCA secured access to a premium meeting room at a highly favorable rate, facilitated by the assistance of the IRTA Executive Director, Jessica Newbold! We extend our gratitude to Jessica Newbold for this support. The facility was exceptional—the sole drawback was Jessica’s absence due to travel, precluding her special appearance.

The Board meeting spanned approximately three hours and encompassed discussions regarding: (i) legislative issues of importance to IMSCA; (ii) potential enhancements to the operations of the IMSCA PAC; and (iii) an opportunity to hear from guest speaker and former State Senator, Dave Sullivan, concerning the evolving Illinois political landscape and its potential implications for legislative issues relevant to IMSCA.

Legislative Issues of Importance

IMSCA tracked nearly 200 bills during the past Spring session. Most of these bills did not pass prior to the adjournment of the 2025 Spring Session. The legislative issue that garnered the most significant focus for IMSCA this year was HB 1224 sponsored by Representative Will Davis and Senator Willie Preston, which addressed retainage for state contracts. While IMSCA did not initiate this legislation, the organization was highly engaged throughout the legislative process. Although IMSCA initially had concerns with the bill as introduced and as the bill passed out of the House, IMSCA was generally supportive of the legislation as amended and passed by both chambers prior to the end of the session. A detailed article regarding HB 1224 is featured later in this publication, and we hope it will be highly informative for you. We do expect future legislative measures around this topic to continue in the coming legislative sessions.

Evening Reception

The Legislative Reception, hosted by IMSCA to conclude our Lobby Day, was held at Trish & Mary’s, a local hospitality establishment located near the Capitol. Invitations to the reception were distributed both in advance and throughout the day. Several lawmakers and their staff attended. Attendance was somewhat lighter than in previous years due to the occurrence of numerous other lobby days that evening, as well as the annual House versus Senate softball game. However, feedback regarding the function was positive, and attendees appeared to enjoy the event.

Special Thanks

In conclusion, special acknowledgment is certainly due to our IMSCA Lobby Day sponsors, including: the Finishing Contractors Association of Illinois; Illinois Chapter NECA; PCA of Greater Chicago; and Illinois Heating, Plumbing and Cooling Association. We are grateful for the support of our sponsors and to all who attended this year’s event. New ideas, constructive comments, and your continued involvement for next year’s Lobby Day are always welcome and appreciated. We look forward to continued progress.

On behalf of the IMSCA Board and our entire membership, I extend heartfelt gratitude to Daniel, Neil and Sean Flynn for their steadfast leadership and unwavering commitment to our mission. Through your guidance, IMSCA has not only strengthened its voice in Springfield but also deepened its impact across Illinois’ construction landscape. Your dedication to advocacy, legislative insight, and collaborative spirit has positioned IMSCA to thrive in the years ahead. Thank you for leading us with integrity, vision, and purpose. ■



IMSCA members with former State Representative Keith Wheeler.



IMSCA members with Senate Majority Leader Kimberly Lightford.



IMSCA members with Senator Michael Hastings.



IMSCA members meeting with Senate President Pro Tempore Bill Cunningham.



Former State Senator, Dave Sullivan, discussing the evolving Illinois political landscape and its potential implications for legislative issues relevant to IMSCA.



Neil Flynn



Daniel Flynn



Sean Flynn

END OF SESSION SUMMARY

By: Neil Flynn, Daniel Flynn and Sean Flynn

The 2025 Spring Session marked the inaugural year of the 104th General Assembly which was expected to be, and certainly resulted in, a very unique and interesting session. The State of Illinois confronted, and continues to face, budgetary challenges not encountered since before the COVID-19 Pandemic. This was compounded by various other issues that were extensively debated and negotiated during the Session, including energy, insurance reform, ethics, and mass transit. Further complicating the dynamics in Springfield, the political climate is on the precipice of a significant transformation, owing to recent announcements from incumbent officeholders that will undoubtedly induce a substantial shift in Illinois politics, unprecedented in recent memory.

Spring Session Recap

Given that this was the first year of a new General Assembly, there was a high volume of new bill filings, the establishment of new committees and memberships, among other notable changes such as leadership positions, all of which influenced the overall legislative process. Entering the session, a primary concern facing the state was an estimated budget deficit of approximately \$3 billion for the upcoming fiscal year (FY 2026–July 1, 2025 through June 30, 2026). This deficit was largely attributable to the cessation of federal revenue streams that the state had previously relied upon. In addition to state-related budget issues, particularly regarding revenue enhancements—which have not been prominent concerns in recent sessions—several other highly debated and contested issues were at the forefront this session, including mass transit reform and energy. A more detailed discussion of these issues follows below.

Mass Transit Reform

An issue that has been on the Illinois legislative horizon for several years is the ongoing matter of mass transit reform for inner-city and suburban bus and rail systems managed by the northeastern Illinois service boards and governing agencies (e.g., RTA, CTA, Metra, and Pace). Beyond the ongoing debate surrounding governance changes to the various Boards, the most contentious issue sought to be addressed this session was the so-called “fiscal cliff” that required resolution to ensure adequate operational and capital funding for the systems. As the session progressed, various versions of legislation emerged in both the House and Senate which were subsequently debated and considered. With revenue being the primary concern for funding the systems’ ongoing needs, the Senate version (HB 3438) proposed a revenue stream that included a “delivery tax” for funding. This version passed the Senate, but was not considered in the House before the session concluded. The House version (SB 2111), which did not include a revenue stream, was never acted upon in the House. It is fully anticipated that this issue will continue to be debated over the summer and may very likely be considered during the Fall Veto Session or even earlier, should the chambers reconvene.

Energy

Energy policy in Illinois consistently remains one of the most, if not the most, highly debated issues before the General Assembly in recent history. This holds true even after the passage and enactment of two of the largest energy bills in the last decade (e.g., FEJA, CEJA). These energy bills are in addition to a more recent energy-related policy enacted in 2023, which involved the partial lifting of the nuclear moratorium for small modular reactors (Public Act 103-0569).

The ongoing debate continues to center on whether Illinois possesses and can maintain the resources for a “reliable grid” that can depend on diverse energy sources, including renewables, coal, nuclear, and natural gas. Since the passage of FEJA and CEJA, several state agencies have conducted studies, held workshops, and engaged in other stakeholder activities on these specific topics. During the 2025 Spring session, the energy issue was again at the forefront (and eventually SB 40 became the legislative vehicle), with key topics including energy storage, a full lifting of the nuclear moratorium, energy efficiency, and other issues related to regional transmission organizations’ capacity markets and their impact on customer bills. By the end of the session, amendments on this issue surfaced, and hearings were conducted, but SB 40 did not advance. This is another issue that will continue to be debated and could be considered during, or perhaps even prior to the Fall Veto Session.

Revenue

As previously noted, addressing the estimated budget deficit for FY 2026 was a significant issue during the Spring Session. For the construction industry, early discussions revolved around the possibility of taxes on purchases for construction materials and other related acquisitions. This was considered alongside a variety of other potential tax or revenue enhancements. Towards the latter part of the Spring Session, the items ultimately included in the revenue package (HB 2755), in addition to other “one-time” mechanisms such as the diversion of sales tax on motor fuel into the Road Fund, comprised an additional tax on sports wagering, hotel rental tax parity, the imposition of sales tax on certain professional services, and the closure of several corporate tax “loopholes.” The final package featured a considerably more streamlined list of items than what had been circulated earlier in the session. Given the upcoming budgets that the state will need to consider, and given the uncertainties regarding future federal programmatic changes and the likelihood of reduction of federal assistance, further exploration of other revenue streams to fund state spending may be warranted.

Illinois’ Political Shift

Beyond the issues considered during the Spring Session, a significant focus is the political shift anticipated in the near future. One of the most significant developments is the recent decision by longtime United States Senator, Dick Durbin, not to seek re-election in 2026. This announcement has already begun to set in motion potential shifts in various Illinois offices. Following this announcement, current Lieutenant Governor Juliana Stratton has declared her candidacy for Senator Durbin’s seat. Current Illinois U.S. House members Raja Krishnamoorthi and Robin Kelly have also announced their intentions to run for Senator Durbin’s seat. Candidates for those Congressional seats have also emerged, with current Illinois Senator Laura Fine announcing her intentions to run for Congressman Krishnamoorthi’s seat, alongside current Mayor of Evanston, Daniel Biss. It is expected that other officeholders will announce their candidacies in the coming months, which could further accentuate this political shift.

Additionally, Governor Pritzker’s decision regarding whether he will seek re-election as Governor of Illinois is another pivotal decision that will create a ripple effect in the Illinois political landscape. Governor Pritzker is very likely interested in running for President, though this would not occur until 2028. Other potential gubernatorial candidates could include current Illinois Secretary of State Alexi Giannoulias, Treasurer Mike Frerichs, and former Mayor of Chicago Rahm Emanuel. Comptroller Susana Mendoza could also be a candidate for Governor, but it is also possible that she may again run for Mayor of the City of Chicago in 2027. Alexi Giannoulias’ name has also surfaced as a potential candidate for other offices. All of this movement has the potential to impact the composition of the General Assembly, with incumbent legislators seeking other offices.

Legislative Schedule and 2025 Fall Veto Session

As mentioned, the Illinois General Assembly is currently adjourned and is not scheduled to reconvene in Springfield until the 2025 Fall Veto Session, slated for October 14-16 and 28-30. There remains a possibility that the General Assembly could return to Springfield prior to these dates. ■



The Tariff Quagmire:

Overcoming Uncertainty from Tariffs and Other Unstable Market Conditions

By: *W. Matthew Bryant, matthew.bryant@saul.com, and Jim Rohlfing, james.rohlfing@saul.com*

Tariffs will have a great impact on the construction industry in 2025 and beyond. Though tariffs have been an available tool since the United States was founded, they have never before been employed as broadly and at such high rates as under the current presidential administration. Even if many of the promised tariffs are ultimately not enacted, the uncertainty caused by the potential implementation of expansive tariffs will significantly disrupt the supply chain of materials for the construction industry. Subcontractors should take precautions now to guard against undue risk from price increases and the unavailability and delay of materials that will be caused by tariffs and the threat of tariffs.

Tariffs are essentially a tax on imported goods which the importer is responsible to pay. They are typically charged as a percentage of the value of the imported goods. Under Article I, Section 8 of the United States Constitution, Congress has the power to “lay and collect Taxes, Duties, Imposts and Excises, ...” Though tariffs were used in the early years of the Republic primarily to raise revenue, today tariffs are primarily a means of protecting domestic industries from foreign competition.

The most frequently cited example of the use of tariffs prior to this year is the Smoot-Hawley Tariff Act of 1930, which imposed significant tariffs during the Great Depression on over 20,000 types of imported goods. Though intended to protect American businesses and farmers during the Great Depression, most historians credit it with shrinking the global economy, prompting retaliatory tariffs from many other countries, and worsening and prolonging the Great Depression.

In 2025, the second Trump administration has made sweeping use of tariffs. Tariffs have been imposed and suspended several times, in varying amounts, against a multitude of countries on all types of goods used in the

construction industry. The exact tariffs in place seem to change almost daily, making the risk to contractors and subcontractors potentially devastating. In January 2025, the administration announced a plan to impose 25% tariffs on Canadian and Mexican imports and in February tariffs were put in place on steel and aluminum imports from those countries. On April 2, 2025, so-called “Liberation Day,” high tariffs were imposed against most countries, then some but not all were suspended, then in July 2025, the suspension was extended to August 2025. To put it plainly, no one knows with certainty what tariffs will be imposed, when they will take effect, against which countries, or as to which materials.

Pre-contract Risk Reduction

Subcontractors should assess the risks posed by tariffs by first identifying vulnerable supply chains, then communicating early in the contracting process with those suppliers and with upstream parties, such as general contractors and owners to develop strategies to address the risk. If potential price increases or delays are recognized early enough, owners, developers, and lenders will more likely be willing to absorb some of the risk. The potential for locking in prices, buying materials in advance, accessing alternative suppliers, and negotiating favorable contract terms becomes more likely if those efforts are started early.

To preserve potential contract claims in the event a later dispute should arise caused by price increases or project delays due to tariffs, subcontractors should keep track of the originally budgeted price, and whether the increase is due to tariffs. Of course, as with any claim, documenting the impact of tariffs and complying with contract requirements to provide timely notice upstream is vital.

W. Matthew Bryant is a Counsel in the Chicago office of Saul Ewing LLP, where as a member of the Construction Practice Group he negotiates construction contracts, resolves project payment disputes (including breach of contract, mechanics lien, and bond claims), and litigates construction defect claims. In addition to his legal practice, he writes and speaks on construction issues, including public contracting and professional design licensure in the Illinois Construction Law Manual. He received his J.D. from Loyola University Chicago School of Law, and B.A. from the University of Chicago.



Contract Negotiation to Mitigate Risk

The most effective way to allocate risk caused by tariffs is to negotiate reasonable contract provisions addressing that risk. Historically, owners and upstream contractors have leverage over subcontractors because the upstream parties control project funds and are generally of larger size. Where an upstream party attempts to impose a risk upon a downstream party to the contract, the downstream party may provide a price based on a worst case scenario, instead of a “reasonable” price for materials. However, in the current unusually unpredictable market conditions, there may be fewer subcontractors willing to assume the risk of materials price increases. Some upstream contractors and owners are willing to agree to contract language accepting some of the risk so they have an alternative to subcontractors providing bids based on worse case scenarios due to tariffs.

Provisions to negotiate to include in subcontracts addressing excessive risk from tariffs include “materials availability” clauses, and “price escalation” clauses. A “materials availability” clause addresses cost and time impacts due to shortages and delays in the market from tariffs and other causes. A “price escalation” clause addresses materials pricing at delivery that exceeds the price contemplated at the time of entering the contract, and allows equitable adjustment of the contract sum to account for the changed price.

The delays and extensions of time clause (sometimes called a “force majeure” clause) in the commonly used AIA general conditions, provides an extension of time for the downstream contractor to perform the work due to “unusual delay in deliveries,” but there is no adjustment to the contract sum to compensate the downstream subcontractor. A downstream contractor may be able to negotiate a modification to allow for equitable adjustment of both the contract time and the contract sum in the event the parties expect that there may be some project impact caused by unavailability of product. The parties may also add substantial and unforeseeable increase in materials price as a condition for allowing relief under a modified force majeure clause.

Another way to address increased prices or unavailable materials due to tariffs is to include a separate line item in the schedule of values, a separate allowance, or a separate contingency for delay or tariff costs. One benefit from using one of these methods is to isolate the effect of tariffs on materials availability. Another benefit is to allow for documentation and tracking of cost and time impacts of tariffs and materials availability separate from other project cost or time impact events.

The parties can also address increases in materials prices using a price escalation clause. An effective price escalation clause will have a clear trigger, such as an increase in price between the date of the contract and the date that

materials are delivered to the site for inclusion in the project. The parties may limit this provision to be applicable only to materials that the parties anticipate will be subject to great variation in price, or that will constitute a significant portion of the materials cost for the project. For example, the parties may agree that on a project involving steel framing that changes in the price of steel, but not other materials, may allow for relief if the change in the steel price is large. Another way to allow for changes in price can be by making the availability of price relief dependent on significant change in a third party price index. This helps assure an upstream party that the change in materials price is throughout the entire market, and not due to any particular action by a downstream contractor or its suppliers.

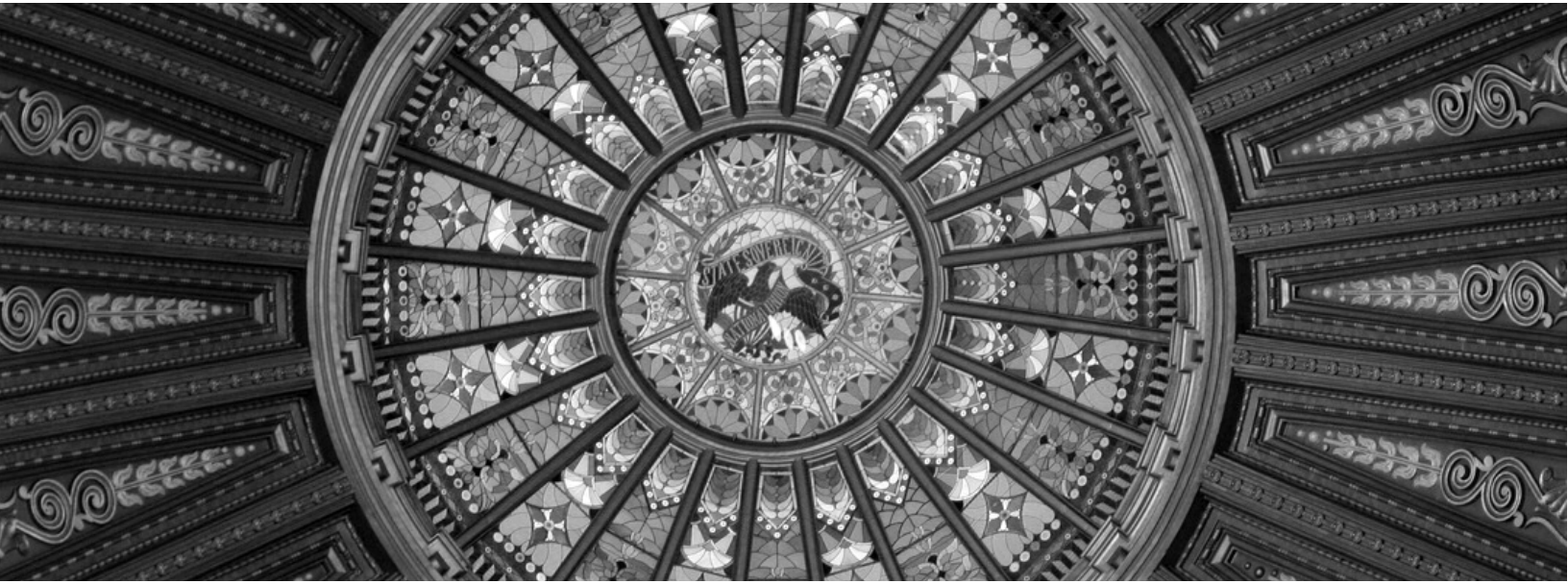
The parties may also agree to share the cost impact of materials price increases. For example, the parties may agree that the downstream party will bear the first zero to ten percent of materials price changes; the parties will share price increases equally for price changes from ten to twenty percent; and the upstream party will bear the risk of price changes over twenty percent, on the basis that the upstream party (and ultimately, the project owner) will receive the benefit of the materials incorporated into the project, and should not receive a windfall if the materials are significantly higher in price than anticipated. When negotiating a price escalation clause, it may also be beneficial for the parties to provide that if there is a downward movement in price, the upstream party will benefit from the decrease in the price of the materials, to avoid a corresponding windfall to the downstream party.

Finally, uncertainty about future price increases can be addressed by procuring the materials early in the construction process. This will allow price certainty to be known to the parties, and there will not be a risk of significant increase in price later in the project that will negatively affect the project’s viability. Of course, there are costs in the early purchase of materials, including having to store the materials, having to handle the materials multiple times, arranging for insurance, and having one’s capital tied up.

The current administration’s tariff actions are causing significant uncertainty in the economy generally and in the construction industry specifically. Because the uncertainty from tariffs is greater than it has been historically, parties should consider ways to protect themselves from tariff caused risks, including through an early assessment of supply chain vulnerabilities, communicating those potential problems early to upstream customers, working with upstream parties to employ risk reduction strategies and, most importantly, by negotiating contract provisions to protect against assumption of excessive and unfair risk. The above suggestions are not intended to be legal advice, and consultation with a qualified attorney before entering into contracts is strongly advised. ■

James T. Rohlfsing is a partner in the national law firm of Saul Ewing LLP, and a member of the firm’s Construction Practice Group. He and his firm provide a myriad of legal services to subcontractors and other participants in the construction industry. He is editor of the treatise *Illinois Construction Law Manual*, published by Thomson Reuters. Jim is currently special counsel to IMSCA and is a past president of IMSCA. Working with IMSCA, Jim has drafted and assisted in passing Illinois legislation critical to the Illinois construction industry and testified on construction law issues before committees of the Illinois Legislature.





Recent Retainage Reforms in Illinois:

First Private Projects, then Local Government, and now State Agencies.

By Jim Rohlfing

The construction industry understands retainage as the practice of withholding a portion of interim and final payments due for construction work performed, to assure the owner that the work will be properly completed. The practice of withholding retainage was adopted in the nineteenth century when contractors were less accountable and profit margins were far greater. In recent decades, most states have enacted laws limiting the retainage that may be withheld on public and private construction projects, reasoning that previous retainage levels were unnecessarily burdensome to contractors and economically disadvantageous to the construction industry. Illinois has recently addressed this concern with three separate legislative measures restricting the amount of retainage that may be withheld from contractors and subcontractors under most private and public Illinois construction contracts.

On June 1, 2025, the Illinois legislature passed House Bill 1224 (HB1224), restricting retainage permitted to be withheld from contractors on construction projects with certain Illinois state agencies. The bill was sent to the Governor June 24, 2025 for signature and, assuming it is signed, it will be the third new law in the last six years enacted by the Illinois legislature restricting the withholding of retainage under Illinois construction contracts. Effective August 20, 2019, most private commercial construction contracts could withhold no more

than 10% retainage for the first half of a contract, with retainage being reduced to 5% when the project is half complete, and it was capped at 5% thereafter. Nearly identical retainage restrictions were put in place for Illinois local government construction projects, effective January 1, 2024. The third and most recent measure (HB1224) would impose the 10%, 5%, and 5% restrictions described above on affected state agencies, but with an additional provision which wholly disfavors withholding any retainage, except as may be deemed appropriate on a project by project basis.

This article will summarize the retainage laws for private projects and local governments, and then discuss the measure recently passed by the legislature affecting state agencies that, if signed by Governor Pritzker, is set to become law June 1, 2027.

Illinois' Retainage Law For Private Construction Projects

The Contractor Prompt Payment Act, 815 ILCS 603/1 ("CPPA"), which governs the timing of payments to contractors on most private projects in Illinois, was amended effective August 20, 2019 to provide that a maximum of ten percent retainage may be withheld from payments under construction contracts (excepting certain residential projects) and, after the contract is one-half complete, retainage must be reduced

to five percent and then kept at five percent for the remainder of the contract. Section 20 of the CPPA provides:

No construction contract may permit the withholding of retainage from any payment in excess of the amounts permitted in this Section. A construction contract may provide for the withholding of retainage of up to 10 percent of any payment made prior to the completion of 50 percent of the contract. When a contract is 50 percent complete, retainage withheld shall be reduced so that no more than 5 percent is held. After the contract is 50 percent complete, no more than 5 percent of the amount of any subsequent payments made under the contract may be held as retainage.

The above provision must be understood within the context of the CPPA which, in turn, incorporates definitions from the Illinois Mechanics Lien Act (770 ILCS 60/0.01). The CPPA, including the new retainage section, applies to construction contracts between general contractors and owners, and to subcontracts. It does not apply to contracts for the construction or improvement of residential properties of twelve or fewer units. Also excluded from its reach are contracts that require the expenditure of public funds. It is reasonable to read the CPPA to provide that fifty percent completion of a contract occurs when half of the price of the contract has been earned.

Retainage Restrictions for Local Government Projects

The Illinois Public Construction Bond Act (30 ILCS 550/1) (“Bond Act”), was amended effective January 1, 2024 to restrict the retainage that could be withheld under construction contracts subject to the Bond Act for local government projects in Illinois. The Bond Act requires the state of Illinois, as well as all Illinois local governments, to obtain a surety bond from every contractor which performs work for them, guaranteeing the contract is fully performed and that the subcontractors and laborers who perform the work are paid. The retainage restrictions only apply when a bond is required under the Bond Act. Until January 1, 2029, the threshold at which a bond is required is \$150,000 for all public works, except those let by the Department of Transportation (“IDOT”) and the Illinois State Toll Highway Authority (“ISTHA”), and for those entities the threshold is \$500,000. Those threshold amounts at which a bond is required are set to return to \$50,000 on January 1, 2029.

Under the modified Bond Act, retainage on local government projects:

- i) may not exceed ten percent (10%) for the first half of the contract; ii) must be reduced to five percent (5%) when the project is half complete; and iii) may not exceed five percent (5%) for all payments thereafter.

These restrictions apply to retainage held from prime contractors, as well as retainage withheld from first and second tier subcontractors on public projects. So, for payments made during the first half of a project by the public entity, the prime contractor and the first tier subcontractor, retainage of up to 10% of the payment may be held, but once the contract is fifty percent complete, retainage in excess of 5% of the balance of work completed must be paid to the contractor, and no more than 5% may be withheld from the remaining payments due under the contract. The restrictions apply to local governments, which include “... every county, township, municipality, municipal corporation, school district, school board, forest preserve district, park district, fire protection district, sanitary district and all other local governmental units.” 50 ILCS 505/2.

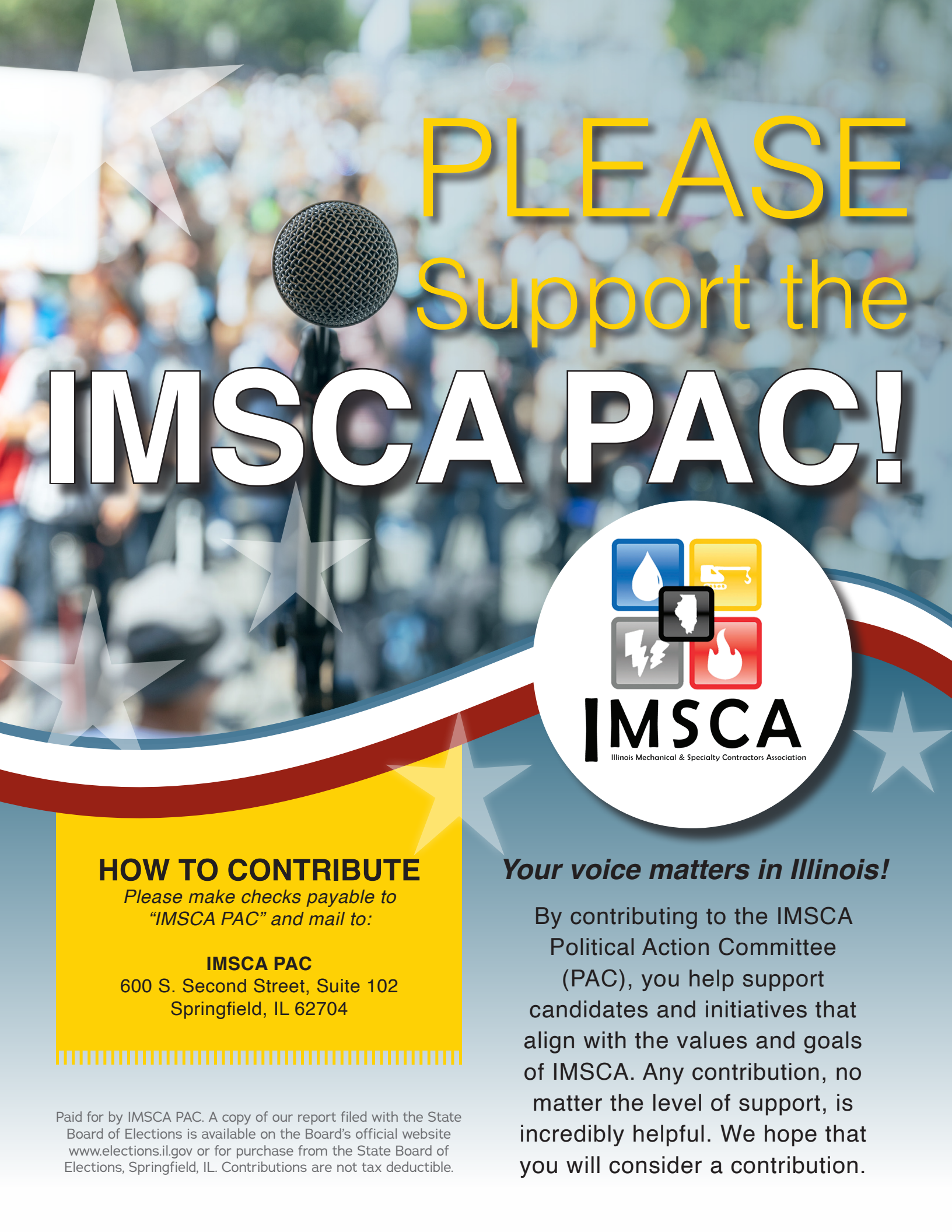
New Retainage Restrictions for Illinois State Agencies

House Bill 1224 would extend to state agencies (Except for the Illinois Department of Transportation (“IDOT”)), the same retainage restrictions described above for local government projects. That is, retainage may not exceed 10% for the first half of the contract, retainage is reduced to 5% at 50% completion, and no more 5% retainage may be withheld thereafter. IDOT is exempted because, as a general practice, its projects which rely on Federal funding do not withhold retainage. As with the retainage restriction for local governments, the new law would prohibit contractors and first tier subcontractors from withholding retainage from their subcontractors in excess of the retainage that may be withheld by the public entity.

In addition to the retainage restrictions applicable to local government projects, if it becomes law, HB 1224 would eliminate all retainage withheld by non-exempt state agencies, except as required on a specific project, when it is shown that “... satisfactory progress has not been achieved...” The Tollway was exempted from this provision reportedly because its commitments to bond holders would not permit it to contract for construction work without retainage. This paragraph of HB 1224 would greatly reduce the practice by state agencies of withholding retainage, except in specifically delineated situations as described therein. The new paragraph of the Bond Act containing this restriction states:

Subject to the limitations in this Section, a State agency may withhold as retainage a portion of the moneys from the payment of a contract that is entered into on or after the effective date of this amendatory Act of the 104th General Assembly if and only if the State agency determines that satisfactory progress has not been achieved by a contractor or subcontractor during any period for which a payment is to be made. Satisfactory progress shall be clearly provided for in the contract between the State agency and the contractor or subcontractor. Retainage may not be used as a substitute for good contract management, and the State agency may not withhold funds without cause. Determinations to retain and the specific amount to be withheld must be made by the State agency on a case-by-case basis based on the performance of milestones under the current contract as provided for in the contract between the State agency and the contractor. A contractor may not withhold retainage from a subcontractor except to the extent a State agency has withheld retainage from the contractor which is attributable to that subcontractor’s subcontract. This paragraph does not apply to the Illinois State Toll Highway Authority.

Except for the above paragraph, HB 1224 would bring retainage restrictions applicable to most state projects in line with retainage laws applicable to private construction and local government projects. Because the retainage restrictions for local and state projects would apply only to projects on which a surety bond was provided by the contractor, public owners may still have adequate protection in the event of a contractor default. In any event, the construction industry undoubtedly will be evaluating the impact of the new retainage laws, and especially the above quoted paragraph, on Illinois construction projects. ■



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