



ICIC Legislative Update – March 7, 2022

Last week, only the Illinois House convened in Springfield. The House held committee hearings and conducted extensive floor action. Upon Friday's (March 4) adjournment, the Third Reading Deadline for substantive (non- appropriations) bills to pass out of the chamber of origin has passed. With respect to the upcoming week, both the House and Senate are scheduled to be in session (March 8-10, but only the House is scheduled to be in session on Friday, March 11). **The next major deadline is the committee deadline for substantive bills to pass out of a committee in the opposite chamber, that deadline being Friday, March 25th in both chambers.**

One of the biggest political headlines last week was the announcement of a 22-count federal indictment against former Speaker of the Illinois House, Michael J. Madigan. The indictment includes charges of racketeering, bribery, wire fraud and multiple counts of extortion. **The indictment accuses Madigan of leading a criminal enterprise whose purpose was to enhance Madigan's power and generate income for his political allies.** The indictment also alleges Madigan used his power in Springfield to siphon business to his law firm. It was disclosed that the grand jury which returned the indictment has been empaneled since April 2021. Madigan maintains his innocence and released a statement denying any wrong-doing.

The scheduled April 8th adjournment date is quickly approaching. As such, focus is beginning to shift toward developing the FY 23 budget. Budget hearings have been held in both chambers to discuss FY 23 revenue estimates. **The Commission on Government Forecasting and Accountability (COGFA) estimates revenues for the fiscal year ending on June 30 are expected to be \$48.5 billion, which is approximately \$4.6 billion higher than projected at the beginning of the fiscal year.** Both chambers' appropriations committees continue to review individual agency budgets and determining how to spend the remaining \$3.5 ARPA funds. **A multi-industry working group that includes representatives from the business and employment industry is encouraging the state to use a portion of the remaining ARPA funds to help shore up the \$4.2 billion deficit in the Unemployment Insurance Trust Fund.** The working group is working on additional ideas to address the UI Trust Fund deficit and hopes to make their proposal public later this month.

In a recent budget committee hearing, **Comptroller Susana Mendoza publicly stated the Prompt Payment Act (PPA) should be repealed.** The Comptroller argued the

state is paying its bills on time and the bill backlog is nearly caught up, therefore, the PPA is no longer needed. She added the PPA didn't serve as a deterrent during the budget impasse and the interest penalties didn't force an agreement on a budget. The Comptroller also stated the PPA is harmful to taxpayers who are ultimately on the hook for paying interest penalties.

The PPA was approved in 1993 and provides that whenever the state fails to pay a bill within 60 days, the state must pay an interest penalty of 1 percent per month; 12 percent per year. The purpose of the Act is to serve as a deterrent for late payments to vendors. It can be argued that this law encouraged vendors to continue to do business with the state during the budget impasse to ensure that some government services could continue. While it's true the state is doing a better job of paying its bills – that doesn't mean the state will continue on this path in the future. Illinoisans are aware that the state isn't known as a beacon of fiscal responsibility. **In response to Mendoza's testimony, ICIC joined a coalition of business industry groups in opposition to the Comptroller's statements to ensure this idea doesn't gain traction.**

ICIC's attention has largely been focused on negotiating with the proponents of **HB 5412 (Leader Marcus Evans, Jr.)**. ICIC has been seeking an exemption for signatories of collective bargaining agreements from the requirements of HB 5412. Early last week, Amendment 3 was introduced by the proponents in an effort to remove opposition from associations who represent union contractors, such as ICIC. Amendment 3 includes the following language:

(g) Primary contractors who are parties to a collective bargaining agreement on the project where the work is being performed shall be exempt from this Section.

After thorough review and discussion, ICIC agreed to remove our opposition with the adoption of Amendment 3 to HB 5412. This decision was not taken lightly. Late in the evening (March 3), the amendment was adopted. After the adoption of the amendment, HB 5412 was debated and called for a vote – twice. After the first round of voting, HB 5412 only received 58 votes, coming up short of the 60 needed for approval. As a result, the sponsor moved the bill to “postponed consideration”. About an hour later, the sponsor called the bill back for another round of debate and a vote. During the second round of debate, the sponsor was asked if the legislation “provides an exemption for union contractors” – and the answer was “yes”. Leader Jay Hoffman also provided discussion in support of exempting union contractors from HB 5412. **The legislation was approved by a vote of 62-36-0.**

This bill now heads to the Illinois Senate for consideration and approval. It is important to note that the proponents of HB 5412 have their work cut out for them. Many of the arguments against HB 5412 outlined by ICIC were discussed during floor debate. **ICIC did a great job of making the proponents work extremely hard to make this bill move and ultimately force the proponents to negotiating table.** Unlike the fall veto

session, the proponents do not have an easy path to victory on this issue. **The remaining opponents of HB 5412 are well organized and have good arguments on their side to continue fighting against HB 5412.** For those reasons – HB 5412 still has a big hill to climb as this fight will continue to the next chamber.

ICIC members should be proud of the role we played in making this issue difficult and uncomfortable for the proponents. We should also be proud for the progress we made in our negotiations on HB 5412. It is understood the language included in HB 5412 as amended isn't exactly what ICIC requested. However, the exemption language is more broad than what was included in previous drafts we reviewed. **The broadened exemption will benefit more union contractors and will add a layer of protection to signatories of collective bargaining agreements from increased and unknown liability, that will undoubtedly be created as a result of HB 5412.** While this language may not be perfect, it puts our members in a better position than what we would be without it.

HB 2538 Amendment #2 (Rep. Denyse Stoneback) sets forth requirements for the licensure of Illinois contractors. This proposal provides that no person may call themselves “general contractor” without a license from the Illinois Department of Financial & Professional Regulation. Although the legislation uses the term “general contractor”, the bill specifically states application to various construction activities. Despite opposition from ICIC, various construction industry associations, and labor, Rep. Stoneback called her bill for a vote in the House Labor & Commerce Committee. **The measure failed to advance out of committee on a vote of 13-13-00 and was returned the House Rules Committee.**

HB 4116 Amendment #3 (Rep. Bob Morgan) amends the Right to Privacy in the Workplace Act to provide that an employer may not take adverse action against an employee for using lawful products; which includes marijuana. HB 4116 as amended includes a definition of “safety sensitive” position. ICIC’s concern with the definition of “safety sensitive” is that it doesn’t go far enough to protect construction industry employers. **ICIC actively sought the addition of the words “road or commercial construction” to the definition of safety sensitive position included in HB 4116 as amended.** Unfortunately, our request was not granted prior to the legislation receiving approval by the House on a vote of 61-41-1. **HB 4116 advanced to the Senate where it will be sponsored by Senator Robert Peters.** *ICIC will continue seeking our requested amendment to include “road or commercial construction” in the definition of safety sensitive position.*

HB 4384 Amendment 1 (Rep. Eva Dina Delgado) is an initiative of the Federation of Women Contractors, Hispanic American Construction Industry Association, the Black Contractors Owners and Executives. HB 4384 as amended aims to create more transparency in the change order process by requiring state agencies to respond with certain actions within a specific window of time after receiving a written request for a

change order. **HB 4384 as amended was approved by the House on a vote of 73-30-01.** This bill advanced to the Senate where it is sponsored by Sen. Ram Villivalam. *ICIC's Legislative Committee reviewed HB 4384 Amendment 1 - a consensus was not reached on a position.*

HB 4393 as amended (Rep. Daniel Didech) amends the Township Code, Illinois Municipal Code, Downstate Forest Preserve District Act, Park District Code, Illinois Local Library Act, Public Library District Act of 1991, School Code and the Illinois Highway Code. **This proposal provides that specified contracts may be let to the lowest responsible bidder, or the best value bidder.** ICIC opposed HB 4393 due to the concern this legislation creates an opportunity for public bodies to circumvent the competitive bid process and opens the door to favoritism. Public bodies could cite "best value" and award the bid to whoever they prefer to work with on a project. **HB 4393 was approved by the House on a vote of 109-02.** This bill advanced to the Senate where it is sponsored by Sen. Adriane Johnson. *ICIC will continue to oppose HB 4393 and work toward its defeat in the Senate.*

HB 5564 (Rep. Larry Walsh, Jr.) amends the Illinois Procurement Code to provide that when a state contract is awarded to the lowest responsible bidder, an otherwise qualified bidder who will fulfill the contract through the use of low embodied carbon concrete may be given preference over other bidders unable to do so. ICIC opposed HB 5564. **HB 5564 received was approved by the Illinois House on a vote of 73-29-2 and will advance to the Senate.**

SB 3795 as amended (Sen. Julie Morrison/Rep. Joyce Mason) and **HB 4772 as amended (Rep. McLaughlin)** are companion bills that allow county governments to enter into design-build contracts. These proposals include scope and performance criteria for design build contracts, a two-phase procedure for selection of contracts, requirements for submission of proposals, procedures for awarding contracts, and requirements of reports and evaluation of contracts. Existing design-build laws in statute include the Capital Development Board, Public Building Commission, Chicago Park District, Park Districts, and most recently, the Forest Preserve District and Conservation District Design-Build Authorization Act. **SB 3795 as amended awaits committee assignment by the House Rules Committee. HB 4772 received approval in the House and will advance to the Senate.**

Additional design-build related legislation includes **SB 3625 (Sen. Melinda Bush)** and **HB 4750 (Rep. Joyce Mason).** These are companion bills that extend the sunset for the Capital Development Board's statutory authority to use the design-build delivery method through 2027. These proposals do not make any other changes to the statute. **SB 3625 is sponsored by Rep. Kathleen Willis and awaits committee assignment by the House Rules Committee; while HB 4750 received unanimous approval in the House and will advance to the Senate.**

SB 2981 (Sen. Ram Villivalam) allows the Illinois Department of Transportation (IDOT) and the Tollway to utilize “Progressive Design Build” (PDB). Proponents of SB 2981 report that PDB facilitates involvement of the design-build team during the earliest stages of the owner’s project development, and PDB is becoming the preferred model for many states. This legislation is drafted similarly to existing design build statutes. **Most important to ICIC members, is the inclusion of language protecting contractors and other design build team members by providing that no member of the design build team may be removed without authorization to do so by the Transportation agency.** ICIC is neutral on SB 2981. **SB 2981 received unanimous approval in the Senate and advanced to the House where it is sponsored by Leader Marcus Evans, Jr.** SB 2981 awaits a committee assignment by the House Rules Committee.

A recently introduced bill of concern to the construction industry is **SB 4177 (Sen. Cristina Castro)**. This legislation mirrors HB 5550 (Rep. Justin Slaughter); which did not advance in the House prior to the committee and 3rd reading deadline. **SB 4177 would bring anyone who transports construction materials and other aggregates to or from a public works project under the requirements of the Prevailing Wage Act.** SB 4177 conflicts with the federal prevailing wage statute (Davis-Bacon Act) and would circumvent the collective bargaining process currently used in negotiations. In addition, this proposal will likely lead to increased construction costs in Illinois. **For these reasons, ICIC opposes SB 4177 and all similar proposals.** This legislation remains in Senate Assignments.

As the spring 2022 legislative session inches closer to the scheduled April 8th adjournment date, ICIC expects to be engaged in the issues listed above and others that may arise due to amendment introductions in the coming weeks. ICIC will continue to keep a watchful eye on legislative issues that are important to the Illinois construction industry.

If you have any questions regarding this information, please do not hesitate to contact Jessica Newbold Hoselton by calling 217.523.8044 or by email at jnewbold@boldnewstrat.com.