



The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY

**MFT, VMT, Oil Royalties! Oh, my!
Is a motor fuel tax the best option?**

Page 3

**Right To Work:
Gov't intrusion
on IN businesses**

Page 4

**Lessons learned
in Mercer County**

Page 13

**Does Davis-Bacon
apply to your project?**

Page 14



The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY

IN THIS ISSUE

From the Executive Director

PAGE 4

Legal Corner

PAGE 5

Focus on Illinois

PAGE 6

Focus on Indiana

PAGE 8

Rail Funding Approved

PAGE 9

Focus on Iowa

PAGE 10

Monitor Profile

PAGE 11

Transportation-Indiana and Iowa

PAGE 12

Public Body Spotlight

PAGE 13

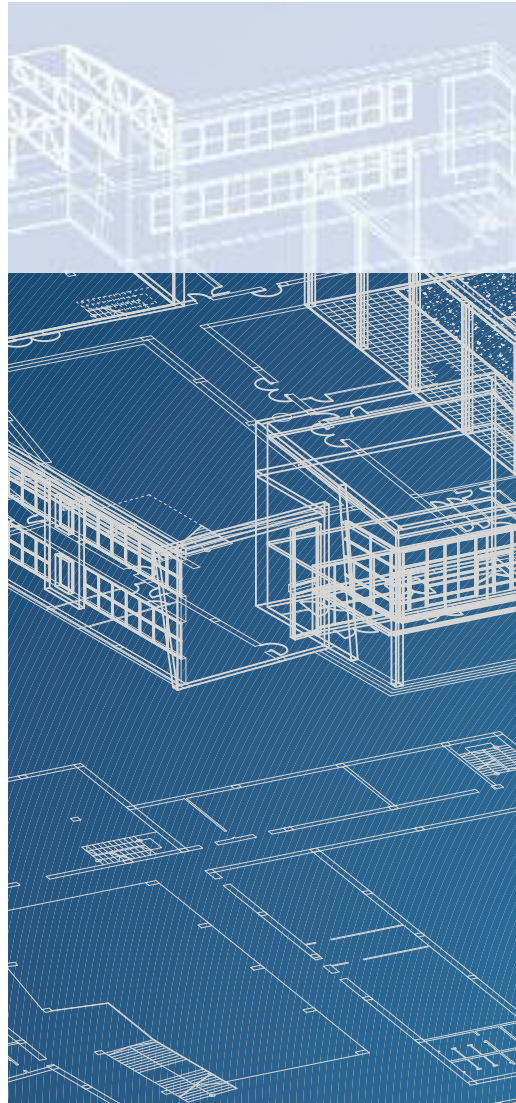
Contractor News

PAGE 15



The Monitor is a free quarterly publication of the Indiana, Illinois, Iowa Foundation for Fair Contracting, 6170 Joliet Road, Suite 200, Countryside, IL 60525
Phone: 815.254.3332
www.iiifcc.org

Designed by
J.V. Murphy & Associates.
www.jvmurphy.com





MFT, VMT, Oil Royalties! Oh, my!

IS A MOTOR FUEL TAX THE BEST OPTION?

After months of talking about a transportation bill, legislators are finally taking steps to implement long-term infrastructure funding.

The American Energy and Infrastructure Jobs Act, introduced as HR 7 in the House, is a reauthorization and reform of federal transportation programs. The bill would expand domestic energy production while providing long-term transportation funding. Further, it would support approximately eight million jobs and provide at least five years of stability for states to undertake their own major infrastructure projects.

The American Energy and Infrastructure Jobs Act would consolidate or eliminate nearly 70 federal programs and allow states more flexibility in setting their own transportation priorities, at the same time, prohibiting states from spending highway funding on non-highway activities. Ultimately, the proposed bill would create jobs and lower energy prices while streamlining the project approval process.

However, HR 7 falls short of many goals. In fact, the bill has a shortfall of \$137 million per year in funding for Illinois alone. In addition, under HR 7 many states will realize a funding shortfall over the next several years. Thus, it is unlikely to find vast support among House members.

Meanwhile, the Senate's "Moving Ahead for Progress in the 21st

Century" (MAP-21) remains on the table. Though MAP-21 also consolidates programs, creates jobs, and plans to work on critical infrastructure needs, the bill is only a two-year endeavor. Stability through long-term federal infrastructure funding is crucial.

The main source of funding is the federal fuel tax. Yet, the last federal fuel tax increase was in 1993, bringing the tax to 18.4 cents per gallon. In 1993, the average passenger vehicle had a fuel efficiency of 20.6 mpg. As of 2009, that number rose to 23.8 mpg. Although it is good to see fuel efficiency is continuing to improve, this also means a critical funding source to improve infrastructure is shrinking.

There has been discussion of alternative ways to fund a federal transportation bill. One method is a vehicle-miles-traveled tax based on how many miles a motorist traveled. Since the tax would be implemented through a GPS system, or require self-reporting, opponents argue that it will be too intrusive on a driver's privacy, or not sufficiently monitored.

Another alternative funding source considered is taxing royalties on oil. Increasing dependence on oil, however, is unattractive to most.

The discourse on federal infrastructure funding remains largely unchanged. We are in great need of a multi-year, federally funded plan to improve our crumbling infrastructure. There have been no new solutions in the debate. The reality remains that increasing the motor fuel tax, while imperfect, may be the best solution we have. In any case, the clock keeps ticking on the March 31 deadline on the most recent short-term extension of SAFETEA-LU.



To see how the lack of federal infrastructure funding has impacted Indiana and Iowa, see page 12.



LETTER
FROM THE
**Executive
Director**

Marc R. Poulos

**Taking away the
small business'
current front-end
business solution
could prove
devastating.
Indiana's RTW bill
is doing just that.**

RTW could devastate Indiana businesses

The right-to-work ("RTW") issue has been a salient topic as of late. Indiana passed a bill enacting a RTW statute throughout its state. The RTW law will make it a crime for anyone to require a worker to remain or become a member of a union and pay dues or fees to a union for any reason.

The RTW issue has been touted as one made up of union versus non-union. However, this is not the correct lens in which to view the issue. The vast majority of harmful effects RTW laws have are on local businesses. Indiana's existing businesses will soon feel the heat of being in a RTW state while the state effectively rewards those prospective businesses not yet operating within Indiana.

To be a small business owner is a tough ordeal. The owner must put his neck on the line to provide training, hiring, drug-testing, and health insurance, just to name a few. However, for years, unions have continually provided solutions to these issues for business owners. As such, unions are America's greatest front-end business solution businesses have. Of course, providing those solutions comes with a cost. That cost is absorbed through union dues and fees. Imagine if the small business owner has to worry about hiring, health insurance and training. That owner would have to absorb a vast amount of the costs associated with these services.

Taking away the small business' current front-end business solution could prove devastating. Indiana's RTW law is doing just that. In not allowing a union to collect fees or dues for its services, RTW takes away a service that a small business cannot find elsewhere. No other front-end business solution provides the type of trained, drug-free workforce and access to health care without a broker.

Further, Indiana is meddling in business' ability to privately contract with who they choose. No longer will a business have the option to do business with a



union on their terms. They must do so on the terms of the state. This type of intrusion is undesirable by most in the state of Indiana.

RTW can prove devastating to existing Indiana businesses and especially small business owners. Contact your local Indiana legislator to help stop this intrusion.

[Legal Corner]



The Basics on PACs

With the 2012 election cycle well under way, rarely a day goes by without media rumblings about political action committees (PACs). While PACs have been around since the 1940s, a 2010 U.S. Supreme Court decision ushered in the era of the so-called Super PAC and campaign financing may never be the same.

The differences between a PAC and Super PAC can be boiled down to contribution limits and the activities of the committee.

A PAC raises money to elect a candidate or support a cause. However, there is a \$5,000 limit on contributions a PAC may receive from an individual, party committee, or another PAC. There are also limits on the amount a PAC may spend on a candidate, political party, or other PAC.

By contrast, a Super PAC can raise unlimited funds, but it may not coordinate directly with a candidate or political party, and it may not contribute directly to a campaign. It engages only in *independent expenditures*, such as political ads.

Super PACs entered the political scene after the Supreme Court's decision in *Citizens United v. Federal Election Commission*, holding that the government may not place limits on independent expenditures for political purposes by corporations or unions; such political speech is protected by the First Amendment.

130 S.Ct. 876 (2010).

Thus, in December 2011, the Seventh Circuit Court of Appeals concluded a Wisconsin statute that limited independent expenditures for political speech violated the First Amendment. *Wisconsin Right to Life State Political Action Committee v. Barland*, 664 F.3d 139 (7th Cir. 2011). The statute capped total contributions to state and local candidates, political parties, and political committees at \$10,000 per year.

Looking to *Citizens United*, the Seventh Circuit emphasized the difference between money spent to advertise views independently, and money contributed directly to a candidate. While a direct contribution to a candidate may open the door to *quid pro quo* corruption, the same threat “does not arise when independent groups spend money on political speech.” *Id.* at 153.

Similarly, *contributions* to groups making independent expenditures “pose no threat of corruption.” *Id.* at 154. Thus, the \$10,000 limit on contributions made to political committees such as the Wisconsin Right to Life PAC was unconstitutional.

We are just beginning to see the impact of *Citizens United* and Super PACs in the 2012 election cycle. Unless Congress takes steps to restrict independent expenditures for political speech, the sky's the limit. ■



Melissa Binetti
Counsel for the
III FFC



Kara Principe
Counsel for the
III FFC



Carmela Gonzalez

FOCUS ON
Illinois

Illinois Environment Protection Agency

A BRIEF INTRODUCTION

The III FFC recognizes the importance of protecting the environment. To that end, our field staff not only monitor public works construction projects to ensure that all prevailing wage rates are paid, health and safety measures are up to code, workers are classified correctly, and that workers' compensation is appropriately provided. Field staff also visit job sites and monitor for possible violations of the Illinois Environmental Protection Act.

The Illinois Environmental Protection Agency (IEPA) is the state agency responsible for enforcing this Act. The mission of the IEPA is to protect and enhance the quality of air, land and water resources.

The IEPA strives to reduce contamination of the land through prevention and cleanup resulting in clean, safe water. The IEPA also safeguards environmental quality, consistent with the social and economic needs of the State, so as to protect health, welfare, property and the quality of life.

The IEPA is comprised of three bureaus: Air, Land and Water.

Permitting requirements help ensure that all federal and state environmental standards are being achieved. IEPA states that an area of concern for small businesses is discerning if their business is required to have an air, land or water pollution control permit. In order to provide guidance on this issue, the IEPA compiled a report that assists employers in making this determination. The report can be found at the IEPA's website: <http://www.epa.state.il.us/small-business/pollution-control-permit/>.

Earlier this year, and made possible by the permit streamlining law signed by Governor Quinn in July 2011, the IEPA launched an online portal page that will make the environmental permit process under IEPA more user-friendly. Some of the features the web portal includes are application forms that can be edited and

submitted electronically, application checklists, summary information on permitted projects, and a permit tracking system.

All of these changes are geared to increase transparency for the regulated community and interested parties. According to Interim Director John Kim: "The improvements in the permitting process were developed in coordination with the Illinois business community with the goal of making compliance with environmental regulations less

burdensome, yet without sacrificing protection of the state's air, land, water, and public health."

Any citizen and/or interested party can file a complaint with the IEPA. The recommended procedure is to complete a complaint form online and submit it electronically. However, you can also download the complaint form and mail it to

the agency or complete a hard copy at any agency field office.

Individuals file complaints with the IEPA for many reasons, such as open dumping of garbage/construction debris, odor complaints from industrial/agricultural facilities, illegal discharges into streams/rivers, or other threats to public health and the environment. Once a complaint is submitted, an investigator is assigned to the claim.

A complaint may be filed anonymously. However, if you provide your contact information, the IEPA investigator can keep you updated on the investigation and can also contact you if any additional information is required to conduct a thorough investigation.

The IEPA is headquartered in Springfield, Illinois, with regional and field offices throughout the State. For a listing of locations for IEPA offices, or for more information, you can visit the agency's website (www.epa.state.il.us/) or contact the IEPA's headquarters at 217-782-3397. ■



OSHA releases educational videos for the construction industry

By Carmela Gonzalez

In the State of Illinois, worker safety has always been a priority. It is a well-known fact that workers in the construction industry have a higher risk of injury than in other fields. Due to that fact, it is of the utmost importance that construction contractors are aware of their responsibilities for providing a work environment free of danger and potential hazards. It is also important for employees to know what their rights are regarding workplace safety and what recourse they have if a contractor fails to provide a safe work environment.

The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) is the government agency responsible for ensuring employers provide safe and healthful working conditions for their employees. In furtherance of this goal, OSHA provides safety standards, training,

outreach, education and assistance to contractors and workers.

OSHA was created following enactment of the Occupational Safety and Health Act of 1970. Workplace safety is monitored either directly by federal OSHA or under an OSHA-approved state program. State programs must meet or exceed federal OSHA standards. Currently, there are 27 approved state plans, including programs in Illinois and Indiana. In Illinois, however, the state plan covers only public sector employees of state and local governments.

OSHA reports that nearly 800 construction workers die on the job annually and that one in every five workplace fatalities occurs in the construction industry. One of OSHA's current outreach initiatives to reduce these statistics is worker and contractor training via online educational videos. These videos cover fall

protection in construction, workers that are struck by vehicles and heavy equipment, sprain and strain injuries, as well as trenching and excavation hazards, to name a few.

The videos are based on real life incidents and include detailed depictions of hazards and the safety measures that could have prevented these injuries and fatalities. Most of the videos are animated and last two to four minutes long, making them easy to watch, while providing important information on some of the most common safety issues in construction.

The videos are available in English (<http://www.osha.gov/dts/vtools/construction.html>) and Spanish (<http://www.osha.gov/dts/vtools/construction.html>). For more information on any workplace safety issues, please visit OSHA's website (www.osha.gov) or call 1-800-321-OSHA (6742). ■



Tom Frailey
SUPERVISOR

FOCUS ON Indiana

Common Construction Wage Hearings

Most would agree that Indiana's Common Construction Wage (CCW) statute is frustrating, at best. While the purpose of the law is well-intentioned – to ensure workers on public work projects are paid a prevailing wage rate – in practice it often comes up short.

The CCW law requires public bodies to set up a 5-member committee to determine a wage scale for public work projects that is “not less than the common construction wage of all construction wages being paid in the county where a project is located.” IC 5-16-7-4(1). It currently applies to projects that cost more than \$250,000; this threshold increases to \$350,000 in 2013. IC 5-16-7-1(m). The committee is also supposed to set rates for skilled, semi-skilled and unskilled workers.

The statute provides little guidance on what the committee should consider when adopting the wage scale, simply stating that it consider any reports pertaining to wage scales submitted by the Indiana State Building and Construction Trades Council (BCTC), the Associated Builders and Contractors (ABC) of Indiana, or any other information submitted by any person. IC 5-16-7-4.

Typically, the ABC of Indiana presents wage information from non-union contractors. These contractors pay based on merit, meaning that skilled workers are paid based on experience, training and years of service with a contractor.

On the other hand, the BCTC presents rates paid by union contractors, set by collective bargaining agreements (CBA). Because the rates are established by a CBA, the rate for skilled workers/journeypersons in a particular trade is the same, regardless of experience or years of service. The rate for semi-skilled workers/apprentices is also established by a CBA.

Although the CCW statute provides little criteria for the Committee to consider, decisions issued by the Court of Appeals of Indiana provide important guidance to CCW committees.

In 1998, the Court of Appeals interpreted the “common” wage to be the wage that “is widely used, or is generally known;” in mathematical terms this is the “mode.” *Union Township School Corporation v. Joyce*, 706 N.E.2d 183, 192, n.7 (Ind. Ct. App. 1998). The

Court specifically found that the legislature deliberately changed the word “average” to “common;” therefore, the wage scales presented should not represent an average wage. *Id.*

An example of the mode is useful to understand this requirement. If there is evidence of wages paid at \$12, \$13, \$17, \$17 and \$20, the “mode” is \$17, because that is the most frequently paid wage rate.

Next, in *City of Jasper v. Collignon*, the Court of Appeals concluded that a CCW Committee has “no duty to investigate facts beyond those presented.” 789 N.E.2d 80, 96 (Ind. Ct. App. 2003). While there is no duty to investigate, recent case law makes clear that the Committee’s determination must be based on substantial evidence.

In *Board of Commissioners in Allen County v. Northeastern Indiana Building Trades Council*, the Court reviewed the information presented by the ABC of Indiana, including the results of a wage survey and a blank copy of the survey on which contractors were supposed to report the “common wage that they pay.” 954 N.E.2d 937, 945 (Ind. Ct. App. 2011). (A copy of this decision is available at the III FFC website at: http://www.iiifc.org/news_indiana_ccw_scale.html).

Based on the information presented, the Court stated: “... we conclude there was not any substantial evidence to suggest that ABC’s proposed wage scale represented the most commonly paid construction wages in Allen County. Rather, the ABC survey only identified the wages most commonly paid by the non-union contractors who participated in the survey, which arguably represented the most common wage for non-union contractors overall. It was undisputed that non-union contractors tend to pay each employee a different wage based upon what each employee is perceived to merit, whereas union contractors pay all employees in a given trade and skill level the same wage based upon multi-employer collective bargaining agreements.... Therefore, even though non-union contractors and employees are a majority in Allen County, it cannot be inferred that non-union contractors pay more employees at the most common non-union wage than do union contractors at the most

common union wage.” *Id.* at 946.

In an administrative review action, courts may not reweigh the evidence, but must determine whether there is any substantial evidence to support the Board’s finding. *Id.* at 943. Another example is useful to explain the Court’s reasoning in the Allen County decision using a mode calculation.

A non-union contractor, paying on merit, may pay 5 skilled electricians with varying years of service and experience different rates – e.g. \$14, \$16.50, \$16.50, \$19, and \$20.50 per hour. However, a union contractor would pay 5 skilled electricians the same rate – e.g. \$19.50 per hour – as required under a CBA. In this example of 10 union and non-union electricians, \$19.50 is the mode, because it is paid the most frequently (5 times out of 10 wage rates).

In *Allen County*, the Court determined that, without evidence to show the frequency of a specific wage rate, the wage scale proposed by the ABC lacked substantial evidence to establish it was the most common wage paid in the county compared to rates paid pursuant to a CBA.

Further complicating the CCW analysis is that to accurately calculate the mode, it is probably not enough to consider only the hourly wage rate per employee. The committee should also consider the number of hours worked at a specific wage rate.

Thus, if each of the employees in the example above worked 2000 hours in 2011, the mode for the non-union contractor would be \$16.50, with 4000 hours at that rate. None of the other hours should be counted towards establishing the “mode,” since they were not paid at the same rate.

And the mode for the union contractor is \$19.50 per hour, with 10,000 hours at that rate since all 5 employees were paid this rate. Based on the hours worked, \$19.50 is the most frequently paid, or mode, rate.

The process of setting a CCW rate is supposed to be objective, based on the mathematical mode of wages paid on projects located in the county. Unfortunately, the process is often subjective, with individual committee members making a decision based on their personal belief about “the right thing to do” for the public body. Even if a committee member does not agree with the mode calculation, it is the current state of the law.

The III FFC is focused on CCW compliance in 2012 and Monitors will be attending wage settings to present information and help ensure committee members understand the statutory requirements.

Certainly committee members have the best interest of the community in mind. However, when they fail to objectively consider the evidence presented, the purpose of the CCW law is thwarted. ■



Chicago-to-Moline passenger rail corridor funding approved

It has been a long time coming, but Illinois and Iowa communities recently learned that \$177 million in federal funding has been released for the new Chicago-to-Moline passenger rail corridor.

This project is expected to be completed by 2014 and should create approximately 2,000 jobs.

The passenger rail service, which has not been offered the last 33 years, will improve transportation between Chicago and Moline with trains traveling between 79 and 90 mph.

The service will allow for intermediate stops in Geneseo, Princeton, Mendota and Plano. Illinois also added \$45 million toward the rail project in the Illinois Jobs Now! capital program.

The III FFC will continue to work with the various funding agencies to insure taxpayers are getting the best value for their taxpayer dollar on this and related projects. ■

MARK YOUR CALENDAR

The Iowa League of Cities Annual Conference and Exhibit will be held September 26-28, 2012 in Sioux City, Iowa. For additional information please visit <https://www.iowaleague.org/Conference2012/Pages/2012AnnualConference.aspx>

We hope to see you there!



John Freitag
SUPERVISOR

FOCUS ON Iowa

FY 2012 may be the largest program year in the Iowa DOT's history

The Iowa State Heavy Highway Subcommittee recently met in Johnston, Iowa with Iowa Department of Transportation Director Paul Trombino III and Director of the Highway Division John Adams. At this meeting, Director Trombino discussed amendments to the 2012-2016 Iowa Transportation Improvement Program that will advance the letting of certain highway projects into fiscal year 2012 and add new projects to the Program. It is projected that this amendment will result in FY 2012 being the largest program year in the Iowa DOT's history.

The amendment advanced one bridge and six interstate stewardship projects to FY 2012, modified the programmed amounts for two projects scheduled for FY 2012, and added 19 new projects involving investments in interstate and non-interstate pavement preservation. Construction of these projects is expected to begin in 2012. A list of the project changes for the

highway section of the Program can be viewed at http://www.iowadot.gov/program_management/five_year.html.

While this amendment provides much needed funding to improve the state roadway system, there remains significant uncertainty in future funding. In particular, federal funding could be significantly reduced in federal FY 2013 because federal revenue flowing into the Highway Trust Fund is not sufficient to sustain existing funding levels. The Iowa Transportation Commission continues to closely monitor funding and will make any necessary changes during the development of the 2013-2017 Iowa Transportation Improvement Program next spring.

The III FFC will continue to work closely with the Heavy Highway Subcommittee and the Iowa DOT to insure that responsible contractors are aware of the upcoming lettings.



Pictured left to right, Joe Farrell, Business Agent for IUOE Local 150 and Mark Williams, Mike Siciliano, and John Freitag from the III FFC participated in the Big Brothers Big Sisters Putt-a-Round at River Center in Davenport, IA in January.

Construction bid, quotation thresholds increase

Effective January 1, 2012, the construction bid and quotation thresholds for the construction of public improvements will increase, under actions taken by the Vertical Infrastructure Advisory Committee of the Iowa Department of Transportation. The current bid and quotation thresholds, and the new thresholds, are shown in the graph below:

Year Effective	Threshold	Cities or Other Governmental Entities	
		≤50,000 population	>50,000 population
2012	Competitive Bid	\$125,000	\$125,000
	Competitive Quote	\$48,000	\$69,000
2011	Competitive Bid	\$100,000	\$100,000
	Competitive Quote	\$46,000	\$67,000

These thresholds apply to public improvements (a.k.a vertical infrastructure), which includes buildings, park improvements, sidewalks, water mains and sewers unless they are constructed as part of a street improvement project.

If the estimate cost of the project exceeds the competitive bid threshold, then the project must be let for construction under the competitive bidding process, which involves a published notice to bidders and a public hearing on the plans, specifications, form of contract and cost estimates pursuant to a published notice.

If the estimated cost of a project is less than the competitive bid threshold but in excess of the applicable competitive quotation threshold, then the city must solicit quotations from at least two contractors regularly engaged in such work and must advise all contractors who have requested notice of such project.

Under both the competitive bid and quotation process, the contract must be awarded to the lowest responsive, responsible bidder.

The Horizontal Infrastructure Advisory Committee made no adjustment for 2012 in the competitive bid thresholds for street, highway, bridge and culvert projects (a.k.a horizontal infrastructure).

Originally published by the Iowa League of Cities in the December 2011 issue of Cityscape (reprinted with permission).

MONITOR PROFILE – RICHARD STEWART

Army Vet, State Trooper Still on the Beat



“I have filed numerous complaints with the Illinois Department of Labor for violations of the Prevailing Wage Act and as a result have recovered many thousands of dollars for the workers.”

I began a second career with the III FFC on January 3, 2000, after retiring on December 31, 1999 from the Illinois State Police where I served for 30 ½ years. I am also an Army veteran of the Vietnam War, a military policeman and a door gunner with fifty-three combat missions.

My III FFC territory consists of the seven northwestern counties of Illinois. Over the years, I have developed many friends in the public sector, including mayors, village presidents, school superintendents, county engineers, city clerks and others who help in promoting responsible bidding on public works project as the III FFC works to ensure a level playing field in the construction industry.

I have filed numerous complaints with the Illinois Department of Labor for violations of the Prevailing Wage Act and as a result have recovered many thousands of dollars for the workers. I have also filed complaints with OSHA for numerous safety violations resulting in fines against contractors.

In our spare time, my wife Leta and I enjoy spending time with our children and grandkids, boating on Lake Michigan and riding our Harley Davidson. But most of all, we enjoy our trips scuba diving, including underwater photography and fish identification, in French Polynesia, Fiji, Bonaire, and we’re looking forward to a live-aboard excursion off the coast of Belize this October.

I appreciate every day as I am a heart attack survivor (1-7-98). And I truly enjoy the opportunity to work at the III FFC where I am able to help people and learn many new skills. ■



Transportation: Indiana and Iowa

Fed funding dries up while infrastructure crumbles

With SAFETEA-LU expired, federal funding continuing only through extensions, and the federal fuel tax unchanged since the early 1990s, our nation is in need of transportation funding. The Fall 2011 issue of the Monitor discussed the desperate need in Illinois for a federal transportation reauthorization bill. As discussed below, neighboring Indiana and Iowa are also in critical need of a robust, multi-year solution.

The American Society of Civil Engineers has given Indiana a D+ on the state's infrastructure. Included in this grade was a C+ for bridges, a C- for roads, and a D+ for railways. Put into numbers, 25% of Indiana's bridges are structurally deficient or functionally obsolete. 29% of the state's major roads are in poor or mediocre

condition even though vehicle travel on Indiana's highways has increased 33% since 1990. A 2009 study indicates that Indiana would need to spend \$16 billion over 30 years for mass transit options such as commuter rail and buses. Currently, IndyGo is Indiana's Public Transportation Corporation that operates 30 local service routes throughout the greater Indianapolis area. 26% of IndyGo's funding comes from federal dollars. The price tag on fixing Indianapolis' infrastructure alone is over \$125 million.

Iowa has not fared better. Iowa received an overall C+ in infrastructure with most of its weaknesses coming in capital planning and project monitoring. With similar grades, 27% of Iowa's bridges are deficient or obsolete. A whopping 41% of Iowa's major roads

are in poor or mediocre condition with 38% of its major highways being congested. Even worse, vehicle travel on Iowa's highways has increased 57% since 1990, while lane miles did not increase. Iowa faces a \$27.7 billion transportation funding shortage over the next two decades. According to a study by the Iowa Department of Transportation, an additional \$215 million per year is needed just to address the critical repairs to Iowa's roads and bridges.

States across the nation are facing the same dizzying numbers as they attempt to repair their infrastructure. With federal funding dried up, the cost to repair D+ rated statewide infrastructure is extremely burdensome. Contact your elected officials to ensure that our crumbling infrastructure becomes a priority in 2012. ■

25% of Indiana's bridges are structurally deficient and 27% of Iowa's bridges are deficient or obsolete.



MERCER COUNTY COMMUNITIES SUPPORT RESPONSIBLE BIDDERS

BY MICHAEL SICILIANO

For some, the torrential rains of 2008 that flooded the banks of the Mississippi River may be a distant memory. It is not for these Mercer County communities. As they rebuild, Joy, Keithsburg and New Boston are making sure public works projects are performed by responsible contractors.

Located along the Mississippi River, the Village of Joy adopted a responsible bidder ordinance (RBO) in October 2010. The Village had problems with a contractor in the past, so passing an RBO made sense.

According to Village Clerk Gwen Terrill, "I have a vivid memory of a contractor a few years back being awarded a public works project. We trusted this contractor to live up to the contract. Little did we know that because of their lack of experience and qualifications, the Village had to spend well over the project estimate to correct this contractor's mistakes. The Responsible Bidder Ordinance will ensure this won't happen to us again."

The neighboring City of Keithsburg passed an RBO a year later, in October 2011. Keithsburg was founded in 1837 and is also known as Middle Yellowbanks, situated in the Yellowbanks Territory, as named by the Sac and Fox tribes for the sandy yellow clay soil in the riverbanks. Keithsburg hosts outdoor activities year round, including boating, jet skiing and fishing on the Mississippi, as well as hunting and camping.

Keithsburg Alderman Maxine Henry explains why the City has an RBO: "Adopting a Responsible Bidder Ordinance allows our City to award a contract to the lowest responsible contractor. By using the ordinance it is very easy to find out if a contractor meets our established criteria and qualifications. We all feel better knowing we are doing our best to protect the taxpayers in our City when funding public works projects."

Maxine Henry is also Mercer County

Board President. The County passed an RBO in June 2011.

Finally, the City of New Boston is in the process of reviewing an RBO. Like Joy, the City is motivated to adopt an RBO after the community had a bad experience with a contractor.

Mayor Chris DeFrieze explains: "Last summer, our community experienced something that we never want to happen again. A large company used a general contractor that subbed out a very large project. This subcontractor brought in a labor force from New Mexico and Mexico. They brought in over 100 workers by vans and many of these out-of-state workers slept in an abandoned warehouse. The company spokesman stated that they had to bring

in these workers because our area did not have qualified workers to work on this project. That was a slap in the face for all our local trades and workforce, especially at a time when we were experiencing a very high unemployment rate. We have highly trained trades people and contractors in Mercer County and our neighboring communities that can accomplish any task."

Called the Upper Yellow Banks by local tribes, New Boston has the distinction of not only being surveyed by Abraham Lincoln, but also being the first town the future president surveyed. Mr. Lincoln mapped the town out in a wagon wheel shape, which explains the City's uniquely shaped lots and street directions.

These Mercer County communities all recognize the value of contracting with responsible bidders. For more information about an RBO for your community, please contact the III FFC.

Top photo: Maxine Henry, Keithsburg Alderman and Mercer Co. Board President (left) and Terri Gibson, City Clerk (right). Middle photo: Cindy Britton, Joy Public Works Director (left) and Gwen Terrill, Village Clerk (right). Bottom photo: Christopher DeFrieze, Mayor of New Boston



DAVIS-BACON AND RELATED ACTS

A MORE EXPANSIVE VIEW OF THE DAVIS-BACON ACT

We typically think of Davis-Bacon requirements applying to contracts for construction with the federal government or District of Columbia, or on federally-assisted projects with a federal agency through grants, loans or insurance. In short, project financing is traced directly to the federal government.

But a June 2011 ruling by the U.S. Department of Labor's Wage and Hour Division (USDOL-WHD) shows that Davis-Bacon requirements may apply to more projects than you think.

At first glance, the \$700 million CityCenter DC project may not appear to be covered under the Davis-Bacon and Related Acts (DBRA) because it is privately funded. However, it is also a redevelopment project on land owned by the District of Columbia (District) and leased to a Developer.

In 2009, the Mid-Atlantic Regional Council of Carpenters petitioned the USDOL-WHD to apply the Davis-Bacon Act to the project. WHD initially denied the petition.

But in June 2011, Acting WHD Administrator Nancy Leppink granted the Carpenters request to reconsider and concluded Davis-Bacon requirements apply.

The ruling explains that the District entered into a series of agreements with the Developer "including 99-year ground leases for the purpose of developing the site in accordance with a detailed master plan. Under the ground leases, the District will retain ownership of the land and ownership of the improvements will revert to the District at the end of the lease terms."

It goes on to explain the WHD's position that the District and Developer contracted for construction through project agreements with milestone dates for things such as the submission of budgets and completion of development and construction. The District also has authority to disapprove architects, construction contractors and any significant changes to the master plan. The District also has the right to terminate the agreements for certain events such as the Developer's failure to meet milestone dates or make

scheduled rental payments to the District.

Based on these facts, WHD concluded the project will be carried out with the District's direct authority, making it a "public work."

Next, WHD looked at whether the project "will serve the interest of the general public." 29 CFR 5.2(k). Factors included the creation of public space including streets, pedestrian alleys, a new 1.5 acre park and a new central plaza including a multi-use entertainment space. Further, the District required that 20% of the residential units will be dedicated to affordable housing. Thus, WHD determined the project has a public benefit.

Based on these facts, WHD concluded that Davis-Bacon requirements apply to the CityCenter DC project. However, it also determined that this obligation would apply prospectively (construction began in April 2011).

The District and Developer appealed the Administrator's decision to the USDOL's Administrative Review Board. If the ruling is upheld, the Carpenters' may seek retroactive application and back wages.

Critics of the June 2011 decision argue that the project is privately funded, that application of Davis-Bacon requirements will increase labor costs by millions, and that the ruling will chill or stop similar redevelopment in the District.

The Carpenters' attorney, Terry Yellig, has a common sense response to the critiques: "Without the participation of the District of Columbia, would this project have gone forward? I think the answer is no."

Whether similar redevelopment projects will have a "public benefit," bringing them within the scope of Davis-Bacon, must be considered on a case-by-case basis. In the CityCenter ruling, WHD carefully weighed the case law and past agency rulings to make a determination.

In short, the WHD's ruling should encourage public bodies, contractors and workers to look at Davis-Bacon requirements in a more expansive way. ■

A June 2011 ruling by the U.S. Department of Labor's Wage and Hour Division shows that DBRA may apply to more projects than you think.

Contractor News

By Rodney B. Urbano, Vice President

Town and Country Paving

Tom Burns started Town & Country Paving in 1982. At that time he and his soon-to-be wife, Toni Urbano, decided they would start their own paving company. Tom convinced Toni's son, Carmen, to buy a single axle dump truck. Before long, he was paving. Shortly thereafter, all the Urbano Brothers including Mike, Carmen, John, Rodney and Danny were working for Town & Country Paving.

In the early days, Town & Country was primarily a driveway paving contractor in Lake County, Indiana.

Tom was known to drive endlessly around Northwest Indiana looking for potential clients. He soon realized there was a strong need for a residential paving contractor in Jasper and Newton counties, so the entire family moved to Rensselaer, Indiana.

Town & Country got a big break in 1984 with the opportunity to purchase an asphalt plant and Babcock Paving. Although the plant was outdated and required a lot of maintenance, Town & Country produced asphalt from that plant until 1999.

Between 1984 and 1999, Town & Country evolved from exclusively paving driveways to doing street paving for local municipalities and counties, as well as commercial and industrial projects. This was also a period where Jasper and Newton Counties saw a lot of growth, such as the Newton County landfill and numerous factories and distribution centers.

Another opportunity arose in 1993 when Rogers Group offered Town & Country a site at their Newton Stone Quarry to lease and operate a second asphalt plant in Kentland, Indiana. At that time, Tom offered me a job to help manage the company. After completing my degree in Civil Engineering at Purdue, I'd left the area to build power plants. Excited to get back into the family business, I accepted.

Town & Country operated the Kentland plant from 1993 through 2000 and partnered with Milestone Contractors to perform several Indiana Department of Transportation projects.

In 1999, Town & Country decided it was a good time to purchase industrial property in DeMotte, Indiana to set up shop. Town & Country also purchased another used asphalt plant in 1999. With great effort and resilience, Town & Country opened up shop in DeMotte in 2000. Compared to leasing property, owning property was a nice change of pace.



Pictured left to right: Dan Urbano, Plant Manager; Eric Urbano, Assistant Plant Operator; Mike Urbano, Personnel Director and Roney Urbano, V.P./General Manager.



The new millennium brought much work in residential development for Town & Country, as Jasper County was in the state's top 5 growing counties almost every year.

Sadly, Tom Burns, our founder and father, passed away in 2006.

Looking toward the future, the five Urbano brothers discussed becoming more competitive in the marketplace. Town & Country was manufacturing hot mix asphalt with 1960s technology. With volatile oil and gas markets, we realized that we would either need to get 21st century technology or be passed by competitors.

The family agreed to purchase a new asphalt plant in 2008. It was by far the company's largest investment and the first new plant in 24 years of business. The plant became operational in 2009. Town & Country also has a state-of-the-art asphalt mix design and testing lab.

Today, Town & Country employs over 30 men and women, with a fleet of ten dump trucks and over \$2 million in paving equipment. They are proud members of IUOE Local 150, Teamsters Local 135, and Laborers Locals 41 and 81.

It's hard to imagine removing a driveway with a pick and sledge hammer as we did 25 years ago. Today, it takes over \$1 million worth of equipment.

Many people are completely amazed at how five brothers co-exist in a single business. The answer is easy. I tell them, "I know how, our mother."

Successful projects Are built with teamwork.

It's really quite simple. Successful projects happen when Labor and Management share the same priorities. And when the highest priority is having a team of safe, well-trained workers on the jobsite, those projects are completed on time and on budget.

So who keeps everyone on target? We do.

**We're the Indiana, Illinois, Iowa
Foundation for Fair Contracting.**

We bring Labor and Management together to assist public bodies and contractors with OSHA, contract compliance and other contracting matters, while striving to secure work for responsible contractors.

**Ready for success?
Call or click today to
learn more.**



**Indiana, Illinois, Iowa Foundation for
Fair Contracting**

6170 Joliet Road • Suite 200
Countryside, IL 60525
815.254.3332

www.iiiffc.org

Trustees

David A. Fagan—Chairman
Financial Secretary—IUOE, Local 150

James Sieracki—Secretary
President—Central Teaming Co., Inc.

James M. Sweeney—Trustee
*President—Business Manager—
IUOE Local 150*

James J. McNally—Trustee
Vice President—IUOE Local 150

Steven M. Cisco—Trustee
*Rec – Corresponding Secretary—
IUOE Local 150*

Marshall Douglas—Trustee
Treasurer—IUOE Local 150

David Snelten—Trustee
President—Excavators, Inc.

Dan Aussem—Trustee
*Executive Director—IL Valley
Contractors Association*

Greg Hass—Trustee
*President—Associated Contractors
Quad Cities*

David Austgen
President—Austgen Equipment

Marc R. Poulos
*Executive Director—IN, IL, IA Foundation
For Fair Contracting*

