



# The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY

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# The Monitor

RAISING THE BAR BY MONITORING THE CONSTRUCTION INDUSTRY

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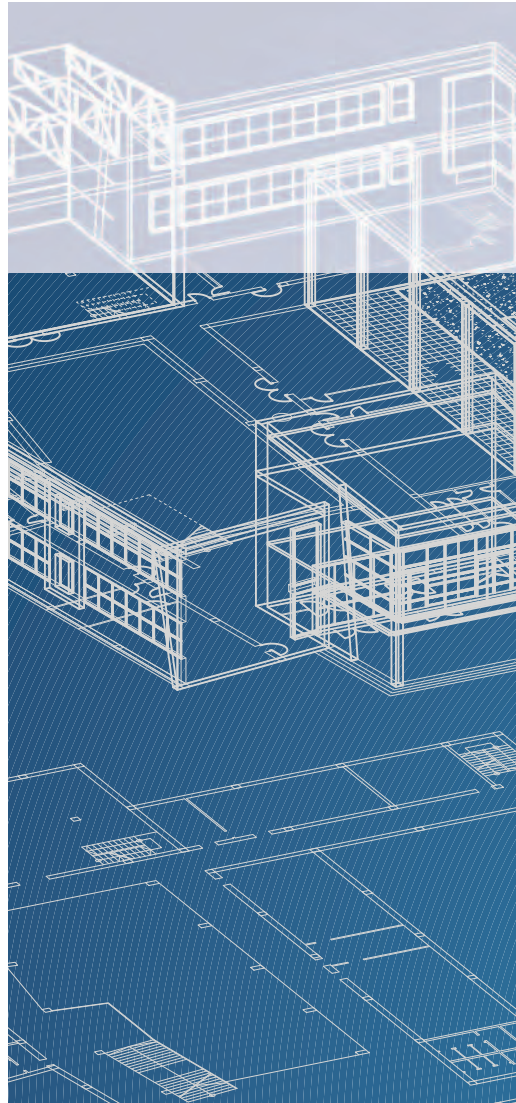
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**What the nation needs is a multi-year comprehensive transportation bill as opposed to a series of short-term extensions.**

**—Obama Administration**

extension. Many argue that this is another extension that delays any long-term solution.

Earlier this year, the House attempted to create another surface transportation bill expending \$260 billion that was

going to build and repair roads, railroads and infrastructure while creating needed jobs. One of the major reasons the initiative failed was because the measure was set to remove mass transit funds from a dedicated fund.

More recently, the House passed H.R. 4348 in mid-April. The measure would provide another 90-day extension of the federal aid highway, highway safety, motor carrier safety, transit, and other programs funded out of the Highway Trust Fund. H.R. 4348 will now go to the Senate where leaders will likely amend the bill to include MAP-21, the two-year \$109 billion transportation bill the Senate passed.

Senate Democrats urged the House to move quickly to conference in which both houses appoint conferees to negotiate the final details of H.R. 4348 in conference committee. Conferees have been appointed. Senator Dick Durbin from Illinois has been named as one of the conferees.

Because the House Bill is a stripped down package, many expect that most of the language of a conference report will include MAP-21. Many are hoping MAP-21 will be incorporated into H.R. 4348 in order to provide a multi-year transportation bill.

H.R. 4348 extends programs from July 1, 2012 through September 30, 2012 and includes language to move forward on the Keystone XL pipeline and to provide continued clean up for the Gulf of Mexico 2010 oil spill. Before the final vote in the House, several amendments were made. A few of those included environmental streamlining reforms, tying expenditures to revenues in the Harbor Maintenance Trust Fund, and avoiding EPA regulations for coal ash. Senate Democrats are expected to hold strong and reject House Republican demands to include approval of the Keystone XL pipeline.

In a statement of administration policy, the Obama Administration released their strong opposition for H.R. 4348. The Administration criticizes the extension aspect of the bill concluding that what the nation needs is a multi-year comprehensive transportation bill as opposed to a series of short-term extensions. The Administration believes extensions fail to provide certainty to states and localities in undertaking long-term planning of programs and projects essential to the nation.

It seems unlikely that H.R. 4348 will get through conference before November elections, however we remain optimistic that Congress is getting closer to a multi-year, comprehensive transportation bill. ■

# One step closer to multi-year federal transportation bill

**T**he House and Senate approved a 90-day extension of federal highway programs on March 29, 2012. This approval came just days before federal authorization would have expired in which highways and transit projects across the nation could have been shut down. The bill, H.R. 4281, extends current funding for road and transit projects until June 30, 2012. This is the ninth continuance of the last multi-year highway authorization approved by Congress, which expired in 2009. The extension came at a critical time for construction—the launch season for many highway projects.

Democrats criticized Republicans for not accepting MAP-21, a two-year \$109 billion version of the transportation measure that the Senate approved earlier in March 2012. Much of the proposed projects this construction season are threatened to be lost due to the 90-day



LETTER  
FROM THE

## Executive Director

Marc R. Poulos

Many believe that  
unemployment  
will remain high in  
the construction  
industry

# Construction jobs need solid foundation

New construction industry numbers are coming in for 2012 showing losses in both the residential and non-residential sectors.

According to the Commerce Department, housing construction has fallen with starts of new homes down almost 6% from February. Yet, starts remained higher than a year earlier being 10% ahead of March 2011.

Single-family home starts fell .2% while starts on buildings with five or more units fell almost 20%. Building permits rose 4.5% in March. The Commerce Department report suggests less residential investment in the first and second quarter.

The non-residential construction industry has not fared better. The industry saw a drop of 7,000 jobs in March. The construction industry unemployment rate rose slightly to 17.2% from 17.1% while building construction companies eliminated 10,600 jobs. Despite an unexpectedly slow March, the data still shows that the labor market is improving this year.

Non-residential and residential construction added 10,000 jobs since March 2011. Some say March was disappointing due to abnormally warm weather causing February's employment to be artificially high.

Many believe that unemployment will remain high in the construction industry without a comprehensive, multi-year federal highway and transit bill. While there are a number of upcoming projects in Illinois on the Illinois Tollway and with the Illinois Department of Transportation ("IDOT"), many of these rely on federal funding.

IDOT currently has various Interstate 55 interchange and reconstruction projects underway as well as many State and local routes being reconstructed. Besides construction, IDOT is performing various studies such as bus operations on Interstate 55 and many interchange studies across the state.



The Illinois Tollway Authority has upcoming paving projects on Interstates 94, 294, 80, and 88. *Move Illinois* is the Illinois Tollway Authority's capital plan for projects through 2026. *Move Illinois'* program summary highlights funding as one of its major challenges.

There are many current and upcoming construction projects. While the outlook remains positive, many of these projects are dependent upon funding from the federal government. A comprehensive, multi-year transportation bill would ensure that these projects, and many future projects, service our roads and infrastructure.





# Employee Misclassification

**M**isclassifying employees as independent contractors is one of the most common ways an unfair contractor cheats. Misclassification saves the contractor between 15–30% on payroll costs because it's not paying its share of social security taxes, workers' compensation premiums and state unemployment insurance contributions.

The U.S. Department of Labor (USDOL) identifies this as “a serious problem for affected employees, employers, and to the entire economy.”<sup>1</sup> To address concerns, the USDOL launched a Misclassification Initiative. The initiative includes a Memorandum of Understanding (MOU) between the Department and Internal Revenue Service (IRS), agreeing to work together and share information “to reduce the incidence of misclassification of employees, to help reduce the tax gap, and to improve compliance with federal labor laws.”

In addition, the Department's Wage and Hour Division (WHD) signed MOUs with a number of state labor departments and other agencies to combat misclassification. Illinois is one of these states. Joseph Costigan, Director of the Illinois Department of Labor (IDOL), signed an MOU with WHD in September

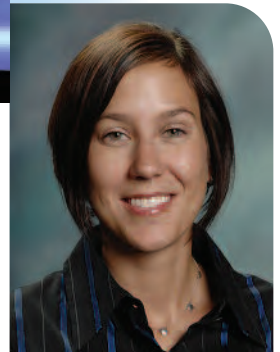
2011. The goal of the MOU is to improve enforcement of applicable laws through information sharing and cooperation between the state and federal agencies.

In addition to minimum wage and overtime laws, workers compensation, unemployment insurance and tax laws are also implicated by worker misclassification.

Some states have enacted legislation that specifically addresses employee misclassification. Illinois was a leader in such legislative initiatives, enacting of the Employee Classification Act (ECA) in 2008.<sup>2</sup> The ECA presumes that a person working on a construction project is an employee. If the employer classifies the worker as an independent contractor, the employer has the burden of showing that the person is a legitimate independent contractor. For example, the contractor must show that the worker provides his own materials and tools, is working in a trade that is different than the contractor's usual business, and is free to work for businesses other than the contractor.

The Illinois Department of Labor enforces the ECA. In 2011, the Department processed 56 complaints; assessed \$14.4 million in Preliminary Investigative Findings (PIF) penalties; assessed \$6.7 million in Final

See **MISCLASSIFICATION** on page 14



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FOCUS ON  
**Illinois**



# The Illiana Expressway

## AN ILLINOIS PERSPECTIVE

A multi-billion dollar project on the horizon in Illinois is the Illiana Expressway. This project is designed to address the projected growth in the Will County area – one of the fastest growing counties in Illinois and the United States. Specifically, it will provide an alternative east/west route to ease congestion along I-90/94 in southern Will County. Long range planning also considers the burgeoning freight and logistics centers in Will County and the possibility of a future airport there. According to the Will County Center for Economic Development, Will County is one of the largest Inland Ports in North America. Growth of this industry has been significant in the last decade and continues to be high due to its transportation assets, affordable land, a skilled workforce and the County's pro-business attitude toward development.

In June 2010, Illinois Governor Pat Quinn and Indiana Governor Mitch Daniels signed legislation authorizing the process that will lead to construction of the Illiana Expressway. In particular, each state passed

legislation authorizing public/private partnerships to finance construction.

Currently the project is in the study phase. This process is dictated by the National Environmental Policy Act (NEPA) and is divided into two tiers. The Tier One Environmental Impact Statement (EIS) includes identifying transportation needs, developing and evaluating various routes, and selecting preferred alternatives for the project. This EIS also factors in impacts on endangered species, wetlands, flood plains, water ways, residential areas, commercial areas and industrial areas among other criteria.

Tier one of the study also includes the selection of a preferred alternative route for the proposed Illiana Expressway. Numerous routes for the expressway have been proposed.

Various criteria were considered in identifying the preferred alternative. Some of the considerations included environmental impacts, community impacts, preliminary capital cost estimates and compatibility



with multipurpose uses. The study team has identified a preliminary preferred alternative and is moving forward with further evaluation. This route starts at I-55 just north of Wilmington, Illinois and heads directly east, passing through the southern end of Peotone and Beecher before heading into Indiana.

The Illinois Department of Transportation (IDOT) contracted with Parsons Brinckerhoff to conduct the study and it is anticipated that Tier One should be completed by April 2013.

Once Tier One of the study is completed, Tier Two can begin. The Tier Two EIS may take another 24 to 36 months to complete. This part of the study will include detailed engineering and environmental studies of the preferred alternative, as well as a formal financial plan for the project.

Public input is a critical factor in all parts of the study. Numerous public meetings and workshops have already been held during all phases of the study. The study team has made a newsletter available to all and even allows for questions and comments about the project to be submitted online at [www.illianacorridor.org](http://www.illianacorridor.org). These meetings have been well attended. In

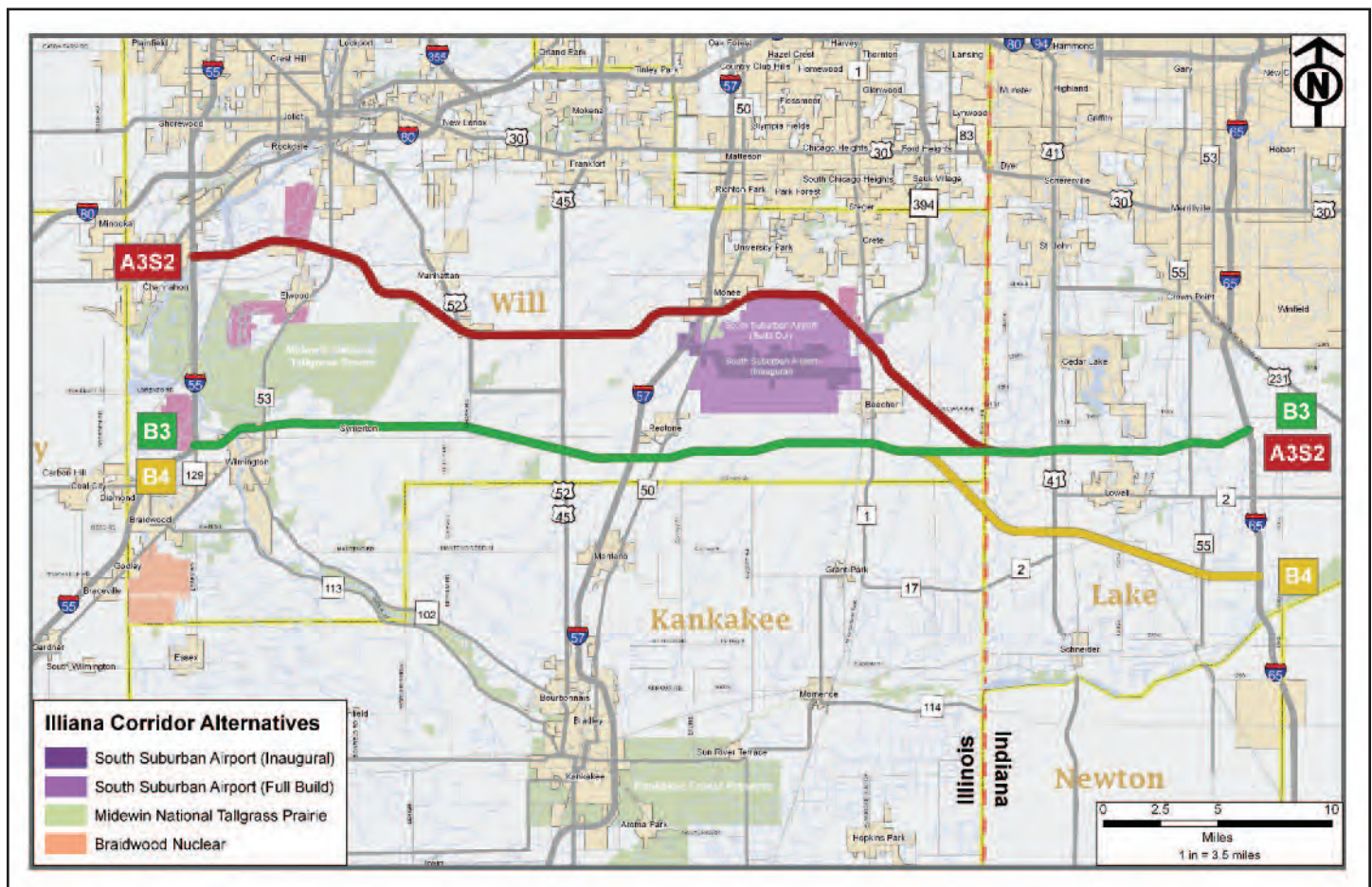
fact, the Wilmington City Council decided to move a March 2012 meeting from City Hall to the International Union of Operating Engineers, Local 150 training facility in Wilmington to accommodate the anticipated crowds based on attendance of other public hearings. The next round of Public Hearings is tentatively scheduled for Summer 2012.

Currently only Tier One and Tier Two of the study have been funded. Several options are being considered for future financing, including the use of public funds (local and/or federal), the use of user fees or tolls, as well as a strong possibility for a public-private partnership to secure financing and move forward with the project.

While the long-term planning process is complex, initial studies show the overwhelming need to link this corridor between Illinois and Indiana. This need is also obvious to anyone who regularly travels along I-80/94.

In addition to easing congestion and promoting intermodal development, the Illiana Expressway project will provide thousands of short term construction jobs, and even more long term jobs. The ILL FFC looks forward to updating progress on this important project. ■

**Public input is a critical factor in all parts of the study. Numerous public meetings and workshops have already been held during all phases of the study.**





Ron Kurmis

## FOCUS ON Indiana

# The Illiana Expressway

## AN INDIANA PERSPECTIVE

The long awaited construction of the multi-billion dollar Illiana Expressway moves closer to fruition as plans for this project are progressing. Connecting I-65 in Indiana to I-55 in Illinois, the Illiana Expressway will result in decreased travel time and cost, enhanced safety, increased productivity, and labor and market access. It will fill the current east-west connectivity void, while relieving existing and future congestion on parallel highways and, at the same time, connect the region more efficiently to national and global markets.

It is in a strategic location within a one-day drive of over 82 million people and could serve as a significant catalyst for economic growth in the region. Numerous economic benefits will result from construction activity for the new highway, transportation cost savings for the existing users of the regions transportations systems, and economic developing opportunities resulting from the increased business attraction potential. The number of potential jobs alone is impressive as reported in *Illiana Expressway Economic Opportunities Analysis*. Construction of the Illiana Expressway could result in as many as 4,300 short-term construction jobs during the first 2–3 years and nearly 14,000 long-term jobs over the next 30 years.<sup>1</sup>

The vision of an Illiana roadway dates back to the 1909 Plan of Chicago by Daniel Burnham and Edward Bennett which included an outer encircling highway serving northeastern Illinois and northwest Indiana and bypassing busy metropolitan areas.<sup>2</sup> Conceptual highway corridors linking Illinois and Indiana south of Interstate 80 were also studied by regional planning agencies in both states in the 1960s and 1970s. Feasibility studies for a potential Illiana expressway were completed in 2009 by Indiana and a supplemental study in 2010 by Illinois. The studies showed that transportation improvements could be possible and set the stage for formal studies, which are now beginning.<sup>3</sup>

Following completion of the initial studies, Indiana Governor Mitch Daniels and Illinois Governor Pat Quinn signed a Memorandum of Understanding on June 9, 2010 to plan, build, and maintain the proposed expressway linkage to reduce the number of trucks on local roads, as well as ease traffic on I-80 and I-80/94, a

notoriously congested corridor. Both states also passed legislation authorizing a “public-private partnership,” or “P3,” which allows private sector financing for construction or operation of a transportation facility.

Transportation planners have recommended the expressway to be approximately 50 mile (80km) in length; 10 miles (16 km) in Indiana, and 40 miles (64 km) in Illinois.

According to Jim Sweeney, President and Business Manager of the International Union of Operating Engineers, Local 150, AFL-CIO, there are two major benefits that will result from the Illiana Expressway. “First, the initial construction of the road will create thousands of jobs both preparing the land and building the road. Second, this road will spur additional development throughout the Illiana Corridor, allowing freight and other commercial traffic to move between Chicagoland and Northwest Indiana without dealing with the constant congestion on the Borman Expressway. This will draw intermodal and distribution center development, all of which will create construction and additional secondary development of housing, retail and other facilities.”

Ed Paesel, Executive Director of the South Suburban Mayors and Managers Association, echoed this support in a February 2012 article in the Chicago Tribune, “Trucking, freight and distribution is our economic lifeblood,” said Paesel. “The industry provides thousands of jobs. Not just service jobs but well paying jobs you can support a family on.”<sup>4</sup> The article also explains that “transportation experts see the Illiana as a crucial link in the heart of a region booming with intermodal terminals, where shipping containers are transferred directly from trains to trucks.”<sup>5</sup>

Traffic through the Illiana corridor study-area is estimated to grow by 128 percent by 2040, with a 448 percent increase in hours of delay, accompanied by a population increase of 176 percent, according to planners.<sup>6</sup> Proponents have touted the project as a boon for south Cook County, fast-growing Will County, and northwest Indiana. Preferred possibilities for the corridor have been narrowed to three areas, after Project Managers from Illinois and Indiana weighed more than 100 criteria to refine the list of alternative routes. While a final



# Marcella Kunstek



**“I really enjoy reaching out to public bodies to discuss their future projects.”**

**A**s a little girl, Marcella Kunstek grew up with a love and respect for law enforcement. It affected her personally because her father was in law enforcement for over 35 years. Marcella knew someday she would follow in her father’s footsteps and join in serving and protecting the public.

After 25 years with the Indiana State Police, specializing in Commercial Vehicle Enforcement, Marcella retired and came to work for the III FFC. Marcella’s dedication and commitment to serving the public has carried over to the III FFC.

“I truly believe in the mission and goals of the III FFC,” explains Marcella. “My top priority is to continue to educate public bodies on the benefit of hiring an educated and trained work force. I also enjoy working with the contractors we represent and keeping them up-to-date the ever-changing laws pertaining to construction and on new and upcoming projects.”

Marcella is responsible for seven counties in Indiana: Lake, Porter, La Porte, Newton, Jasper, Starke and Pulaski. “There are times I feel like I’m back on patrol, because every day brings something new in the world of construction.”

In addition to working with public bodies and contractors, Marcella has developed a good working relationship with the Indiana Department of Labor. Together they have resolved issues in the field, prior to them escalating into something larger. Currently Marcella is working with the U.S. Department of Labor on a fringe benefit complaint she has been monitoring for over a year.

When Marcella worked for the Indiana State Police she was responsible for speaking to the public about the rules and regulations involving commercial motor vehicles.

Working for the III FFC, Marcella also has the opportunity to meet with public bodies to discuss rules and regulations pertaining to construction projects.

“I really enjoy reaching out to public bodies to discuss their future projects,” she noted.

Marcella contacts local contractors to make sure they are aware of the projects and particular requirements as well.

In her spare time, Marcella enjoys being the President of Pi Sigma Phi Sorority, a group that raises thousands of dollars throughout the year for local charities, food pantries and individuals in need. She also enjoys spending time with her family. Marcella has been married to Tim for twenty years and they have two children together. They love to travel and are currently planning a trip to Washington D.C. for their 2012 baseball tour.

Marcella is thrilled to be a part of the III FFC Team.

“I will continue to serve our contractors and workers and to ensure a fair and level playing field in the construction industry,” she said.

decision has not been made, the proposed route would extend from Interstate 55 north of Wilmington in Illinois, parallel to the Will-Kankakee County border, to Interstate-65 near Lowell, Indiana, crossing I-57 en route.

Hearings to gather input and educate the public have been and continue to be held throughout 2012. Hundreds of citizens attended hearing in Matteson, Illinois and Crown Point, Indiana in February; some were dismayed at the proposed routes cutting through Will County, Illinois and Lake County, Indiana. However, it is likely that a final decision on the routes will not be made until the end of this year, at the earliest.

After the routes are finalized, the next step will be to identify investors. Currently, there is no state or federal money appropriated for the construction of the expressway, which will likely be a toll road. While this multi-million dollar expressway will be co-owned by the states, it will be financed with private dollars. Actual construction is anticipated to begin in 2015.

According to Indiana State Representative Randy Borror (R-Fort Wayne) “It is critical that we move along with plans on the construction of the Illiana Expressway. The creation will stimulate economic growth, breath a tremendous amount of jobs, and address traffic congestion around the Borman Expressway and I-80/I-94 in Indiana.”<sup>7</sup>

1. Illinois Economic Opportunities Analysis – Final Report, April 30, 2010, at <http://www.dot.state.il.us/Illiana/finalreport.pdf>.
2. Illiana Corridor, Stakeholder Involvement Plan – Version III, March 2012, at <http://www.illianacorridor.org/>, under “Information Center” and “Document Library.”
3. *Id.*
4. Richard Wronski, State officials unveil preferred route for Illiana Expressway, *Chicago Tribune*, February 25, 2012, at: [http://articles.chicagotribune.com/2012-02-25/news/ct-met-illiana-expressway-20120225-20\\_1\\_illiana-expressway-corridor-route](http://articles.chicagotribune.com/2012-02-25/news/ct-met-illiana-expressway-20120225-20_1_illiana-expressway-corridor-route).
5. *Id.*
6. Keith Benman, Group maps eight routes for Illiana Expressway, *nwi.com*, October 25, 2011, at [http://www.nwitimes.com/niche/inbusiness/article\\_7d581550-c7bc-5cbf-af76-947b37092876.html](http://www.nwitimes.com/niche/inbusiness/article_7d581550-c7bc-5cbf-af76-947b37092876.html).
7. Charles Thomas, Illiana Expressway Plan moves forward, June 10, 2010, at <http://abclocal.go.com/wls/story?section=news/local&id=7488383>.



John Freitag  
SUPERVISOR

## FOCUS ON Iowa

# Iowa's Misclassification Task Force

**Misclassification of workers as** "independent contractors" instead of "employees" is an ongoing problem in Iowa and across the nation. That is why former Governor Chet Culver issued Executive Order No. 8 in 2008 creating Iowa's Misclassification Task Force.

Recently, a large group of interested individuals were invited to a meeting at the Iowa Workforce Development offices in Des Moines where Division Administrator for Unemployment Insurance Services Mike Wilkinson presented the following enforcement statistics.

Statistical breakdown of misclassified workers (July 1, 2009 – December 31, 2011):

- 307 employers misclassified 3,522 workers
- Total unreported wages were \$75,552,318
- Total State unemployment taxes due are \$2,795,693
- Total State unemployment penalties and interest due are \$980,456

By far the largest industry affected by the misclassification of workers is the construction industry, with 158 employers underpaying 2,015 employees, resulting in unreported wages totaling \$49,480,988.

Misclassification of workers threatens Iowa's economy, its businesses and its most important resource

– its workers. When employers misclassify workers:

- They avoid paying unemployment tax on wages
- They fail to withhold state and federal income taxes
- They fail to withhold and pay Social Security and Medicare taxes
- They might avoid workers compensation coverage
- They might fail to follow wage, contractor registration, or other employment and labor laws
- They underbid honest, law-abiding businesses that pay all taxes owed and comply with work protection laws such as unemployment and workers compensation

It is especially important for local governments to be aware of this practice because they are on the front line to detect such fraud. When misclassification occurs, honest employers lose their opportunity to

participate in the public works arena which weakens the local economy.

To report abuse visit <http://www.iowaworkforce.org/misclassification/report.htm> or call the Iowa Workforce Development Misclassification Unit at (515) 281-3191 or (800) JOB-IOWA (800-562-4692).

The III FFC commends Iowa's Misclassification Task Force for their continued effort to stop this practice and for their devotion to the honest employers and employees of the State of Iowa. ■

**By far the largest industry affected by the misclassification of workers is the construction industry.**

## IOWA ELECTION DATES TO REMEMBER

### Primary:

May 26	Voter Pre-Registration Deadline (can still register but must vote absentee)
June 1	Deadline to request an Absentee Ballot to be mailed
June 4	Absentee Ballot In-Person Deadline
June 5	Primary Election Day (7 a.m. to 9 p.m.)

### General Election:

July 25	Judges Filing Deadline
July 30–Aug. 17	Federal & State Filings
Aug. 6–29	County Filings
Sept. 27	Absentee Ballots Ready
Oct. 27	Voter Pre-registration Deadline (can still register but must vote absentee)
Nov. 2	Deadline to request an Absentee Ballot to be mailed
Nov. 5	Absentee Ballot In-Person Deadline
Nov. 6	General Election Day



# The Iowa Department of Transportation— Promoting Fair Competition on Road Projects

By Mark Williams

The Iowa Department of Transportation (Iowa DOT) Contracts Office has a highway letting each month averaging approximately 800 projects each year. These projects include Interstate, primary and secondary roads, as well as city and county projects that involve federal aid.

The Iowa DOT pre-qualifies contractors by requiring submission of a Contractors Financial-Experience-Equipment Statement at least five days prior to the scheduled letting date. This form can be found in the Iowa DOT website (<http://www.iowadot.gov/contracts/index.htm>) or by calling the Contracts office at 515-239-1414. However, prequalification is not required on all projects.

As bids are received, they are dated, time stamped and held until the day of the scheduled letting. On the day of the letting, bids are opened and reviewed for accuracy. If the bid is incomplete or irregular, the bid is not read and is disqualified.

The Iowa DOT policy is to award the contract to the lowest responsible bidder 30 days from the date of the letting or to reject all bids. Contracts for a city or county project are sent to the local jurisdiction for their decision to award. Each contractor must have a current Certificate of Insurance on file at the Iowa DOT Office of

Finance before the contract can be awarded. Awards can be viewed on the website (<https://www.bidx.com/site/static?page=faqdigital-id-walkthrough.html>).

The detailed process of letting construction projects is conducted by the personnel from the Office of Contracts in Ames, Iowa, led by Contract Engineer Roger Bierbaum and Assistant Contract Engineer Ed Kasper. This office is responsible for:

- Estimating and Contract letting
- Bid review, monitoring and collusion detection
- External civil rights compliance

The Iowa DOT Office of Contracts does a great job following through with their responsibility to make sure that these projects are properly bid. Around this time last year there were 189 projects bid, compared to 225 projects so far this year.

As reported in the Winter 2012 edition of *The Monitor*, FY 2012 may be the largest program year in the Iowa DOT's history. Mr. Bierbaum and his staff are to be commended for being true professionals. They are always available to answer questions and every Iowan should be proud of the work accomplished by this Department.



## 2012 III FFC EXHIBITOR SCHEDULE

The III FFC participates in numerous conferences and events throughout the year. We invite you to visit our exhibits.



III FFC Compliance Monitor Mark Williams, ready to greet attendees at the 2011 Iowa League of Cities Conference.

### INDIANA

#### May 10

Construction  
Advancement Fund  
Awards Banquet  
The Avalon Manor  
Merrillville, IN

#### TBD

Indiana Association  
of County  
Commissioners

### ILLINOIS

#### Oct. 18–20

Illinois Municipal League  
Hilton  
Chicago, IL

#### TBD

Municipal Clerks of  
Illinois

#### Nov. 11–13

Township Officials of  
Illinois  
Convention Center Plaza  
Springfield, IL

### IOWA

#### May 30

Clinton Chamber  
Awards Banquet  
Wild Rose Casino  
Clinton, IA

#### Sept. 26–28

Iowa League of Cities  
Sioux City Convention  
Center,  
Sioux City, IA

## DAVIS-BACON AND RELATED ACTS

# ANNUALIZATION? WHY FRINGE BENEFITS MATTER ON DBRA PROJECTS

**T**he Davis-Bacon and Related Acts require contractors to pay workers a “prevailing wage” on many federally funded and federally-assisted construction projects. The definition of “wages,” “scale of wages” and “prevailing wages” under the Davis-Bacon Act includes the (1) hourly rate of pay and (2) fringe benefits (40 U.S.C. §3141). Determining the hourly rate is generally straightforward, but what about calculating fringe benefits?

The scope of fringe benefits is broad, including things such as medical care, pensions or retirement, death benefits, life insurance, disability insurance, vacation pay, contributions to apprenticeship programs, “or other bona fide fringe benefits.” The Davis-Bacon Act requires that fringe benefit contributions be “irrevocably made” to a third party fund, plan or program. Contractors may also receive credit for costs that are reasonably anticipated in providing bona fide fringe benefits, “pursuant to an enforceable commitment to carry out a financially responsible plan or program that was communicated in writing” to employees (40 U.S.C. §3141).

A key component of Davis-Bacon enforcement is that fringe benefit credit is based on “the effective annual rate of contributions for all hours worked during the year by an employee,” also known as *annualization*.<sup>1</sup> Annualization principles require that the credit for fringe benefit payments is based on the total amount of benefit contributions paid on the employee’s behalf for the entire year.

For example, a union contractor that participates in a multi-employer benefit fund contributes a set hourly rate to a health and welfare fund pursuant to the collective bargaining agreement. This hourly rate is paid for all hours worked by the employee, regardless of whether the work is on a public (Davis-Bacon) or private jobs.

Contractors that do not make contributions on a per hour basis may receive prevailing wage credit for fringe benefits so long as the contributions are irrevocable and made at least quarterly (29 C.F.R. § 5.5(a)(1)(i)), for example, monthly payments health insurance premiums.

To determine the hourly credit a contractor may make for these payments, the annual cost is divided by the total hours worked for each employee. If total hours worked are not available, 2,080 hours (40 hours per week x 52 weeks per year) is used to calculate the hourly credit.

For example, if a contractor provides health and welfare benefits for an individual worker and that premium cost is \$4,160 per year, then the prevailing wage fringe benefit credit for that worker would be \$4,160 divided by 2,080, or a \$2 per hour credit.

If the fringe benefit rate required under the wage determination is more than the credit, the difference must be paid in cash to the employee. In the above example, if the fringe rate is \$5 per hour, \$3 must be paid to the employee “on the check” (\$5 wage determination rate – \$2 credit).

Contractors may not limit the calculation based on hours worked on public projects. Consider the above example – if the employee worked 500 hours on public construction projects, and the contractor used only these hours to calculate the credit, the contractor would be claiming an \$8.32 per hour credit (\$4,160 divided by 500). But the employee did not receive an \$8.32 “benefit” for all hours worked throughout the year. The benefit to the employee is \$2 per hour, thus, the contractor may only take credit for this amount.

The U.S. Department of Labor Prevailing Wage Resource Book provides specific examples and explanations on fringe benefit calculations. The book lists the types of fringe benefits considered by the Department (e.g. medical, retirement, disability, etc.), and explains that contractors may not take credit for any benefit required by federal, state or local law, such as workers compensation or unemployment insurance.

However, the Department does allow credit for certain *approved* supplemental unemployment benefit (“SUB”) plans “at the hourly rate specified by the plan.” Thus, in some cases, a contractor may be allowed to take credit for supplemental

See **DBRA** on page 14

**If you see a contractor taking credit for contributions to a SUB plan, you should contact the Department to determine whether the plan is approved**



# Contractor News

By Todd Kerry

## Water Well Solutions Service Group, Inc.

**W**ater Well Solutions Service Group, Inc. was founded in November of 2000 in Oconomowoc, Wisconsin by Michael E. Judkins and Mark W. Thurow, along with the assistance of several other key employees.

They are a full service water well drilling and water well pump servicing contractor serving industrial, municipal, agriculture, commercial, golf course industry and residential clients throughout the Midwest.

After working for several other water well contractors, Mike and Mark decided that the focus of their company should have a key concept that other contractors missed...providing clients with "Water Well Solutions."

They began running the company out of their garage with equipment from another union contractor, Meadow Equipment Sales & Service, Inc., until they could afford to purchase their own fleet of equipment. Today, Water Well Solutions operates one of the largest water well and pump service fleets in the Midwest.

The company expanded to service the Illinois market in 2004 through a relationship with partners Timothy Kelly and Todd Kerry. Water Well Solutions Illinois Division, LLC is a wholly owned subsidiary of WWSSG, Inc., with offices in Elburn, Illinois.

When Meadow Equipment Sales & Service closed in 2009, WWSSG, Inc. hired several key Meadow personnel to work with the Commercial Division in Elburn.

Most recently, Water Well Solutions opened their third office in Lake Villa, Illinois when the President and owner of the Henry Boysen Company, with a prestigious 85 year history in the industry, joined with Water Well Solutions to start the Water Well Solutions Illinois Residential Division. Most of the union personnel from the Boysen shop were hired to work in the growing Illinois Divisions in Lake Villa and Elburn, expanding our core abilities to service the groundwater industry in Northern Illinois.

As Water Well Solutions continues to grow, even in this difficult business climate, they have developed a diverse team of professionals recognized for their ability to develop and utilize water well technologies to provide comprehensive solutions for water well redevelopment. They continue to specialize in water well rehabilitation, have several key patented technologies, and continue to work to



*Todd Kerry (left to right), Mike Nailor, Dave Knutson and Jim Cleary outside WWSSG, Inc. in Elburn, Ill.*

develop new and innovative technologies.

Water Well Solutions also gives back to the communities they work in. Most recently, they donated an irrigation water well for the Summit Baseball Complex for Children.

As a union contractor, they have had the privilege to work for several union industrial and municipal clients such as the City of Braidwood, Exelon Nuclear, Midwest Generation, Good Shepherd Hospital, the City of Joliet and the City of Elgin. Water Well Solutions is pleased to have been nominated as the authorized water well service provider for the Advocate Health Care system.

Water Well Solutions was the low bid contractor on the last 4 water well projects for the City of Elgin, which included installation of a 350Hp motor in Well No. 6 and removal of 200Hp submersibles for Well No. 1, 2, and 4, along with the installation of two repaired submersible units in Well No. 1 and 2.

Water Well Solutions is very proud of their reputation and are sure you will be as equally impressed with their quality products and services. They have enjoyed rapid growth by attracting the best people in the industry, and continue to strive to meet their client's particular requirements with professionalism and realistic solutions to their ever-changing needs.

They base their business on trust, and are confident their clients will appreciate the firm's innovative, cost effective, and straightforward approach to all their water needs. Visit [www.wwssg.com](http://www.wwssg.com) for more information on their products and services. ■



**MISCLASSIFICATION** *continued from page 5*  
Determination penalties; and issued 18 Notices of Violations “against contractors in the construction industry who unfairly underbid on public and private construction projects by misclassifying employees as independent contractors.”<sup>3</sup>

In Indiana, the General Assembly passed a law in 2010 requiring the Indiana Department of Labor to establish guidelines and procedures for investigating questions and complaints concerning employee classification. Through this process, the Department identified four recommendations to address misclassification, including: (1) an interagency initiative; (2) improved communications among agencies; (3) develop meaningful penalties to enhance the Workers’ Compensation Board’s ability to require coverage on employees; and (4) expand outreach to educate employers and employees.<sup>4</sup>

Subsequently, relevant state agencies published a Joint Report concerning the potential revenue to be recovered by enforcing existing

statutes and the estimated cost of such enforcement.<sup>5</sup> While the General Assembly has not taken further legislative action, information sharing among state agencies has been effective in identifying misclassification in Indiana.

Iowa is taking steps to address misclassification through an interagency task force established in 2008 and charged with preventing, identifying and penalizing employee misclassification. The Misclassification Unit within Iowa Workforce Development works with various state agencies to address information sharing, cross-training, and reporting standards. Complaints are initiated by workers, as well as through leads from the state’s Workers’ Compensation and Contractor Registration departments. Misclassification in Iowa is discussed in *Focus on Iowa* at page 10.

As explained by the USDOL, the goal of misclassification initiatives is “to level the playing field for law-abiding employers and to ensure that employees receive the protections to which they are entitled under

federal and state law.” Although it is an ongoing problem, we are seeing progress to address misclassification through federal and state initiatives. ■

1. *Information about the U.S. Department of Labor’s Misclassification Initiative is available at <http://www.dol.gov/whd/workers/Misclassification/index.htm>.*
2. *820 ILCS 185/1 et seq.*
3. *Top 10 Quinn Administration Accomplishments in the Illinois Department of Labor in 2011, at <http://www.state.il.us/agency/idol/facts/accomplish.htm>.*
4. *Worker Misclassification in Indiana, Joint Report of the Indiana Departments of Workforce Development, Labor, Revenue, and Workers’ Compensation Board (November 8, 2010), <http://www.in.gov/legislative/igareports/agency/reports/DWD22.pdf>.*
5. *Id.*

**DBRA** *continued from page 12*

unemployment payments made *only* on prevailing wage projects, provided the program has been approved by the Department. Employees receive payments from these plans during periods of unemployment or layoff.

Part of the Department’s reasoning for authorizing these credits is that the programs provide for immediate participation, immediate or essentially immediate vesting, and “the higher contributions made during Davis-Bacon work result in an increase in the value of the individual employee’s account.”<sup>2</sup>

Companies administering these plans advertise that the plan makes prevailing wage work more profitable for contractors.

In reality, these plans undermine contractors who provide a comprehensive fringe benefit package to workers, regardless of whether the work is on public or private projects.

Further, employees often believe they must agree to participate in the plan, or risk losing their jobs. And while there are some

safeguards in place to protect an employee’s account value, there is the risk that money in an employee’s account will be forfeited under certain circumstances, resulting in an even greater windfall to the employer.

Fortunately, to date, the Department of Labor has approved very few SUB plans. So, if you see a contractor taking credit for contributions to a SUB plan, you should contact the Department to determine whether the plan is approved. If it is not approved, the contractor is not entitled to take full credit if contributions are only made on prevailing wage projects. Instead, the credit must be based on an annualized rate.

For more information on prevailing wage compliance, including fringe benefit issues, please contact the III FFC. ■

1. *U.S. Department of Labor Prevailing Wage Resource Book 2010, ch. 16, pg. 23, at <http://www.dol.gov/whd/recovery/pwrb/toc.htm>.*
2. *Id. at 24.*



## ELKHART, INDIANA

BY GARLAND "BUTCH" ROSE



Located in North-Central Indiana, the City of Elkhart is close to four federal highways, six state highways and is just minutes away from the Elkhart Municipal and South Bend Regional Airports.

Travel to and from the City's many attractions is extremely convenient. Residents and visitors enjoy a state-of-the-art ice rink, a water park and a newly renovated swimming pool. Elkhart also offers plenty of outdoor activities at its public beach, golf course and public parks.

The City of Elkhart's business community encompasses a variety of industries such as manufactured housing, recreational vehicles, musical instruments and pharmaceuticals. Because of the strong manufacturing base, approximately 15,000 people from surrounding communities travel to Elkhart to work.

Elkhart has a population of approximately 52,000 residents. In addition, the City employs 600 workers, including approximately 120 police officers and 120 firemen.

Elkhart Mayor Dick Moore has an open door policy and enjoys hearing from residents, workers and visitors. Mayor Moore is very receptive to the III FFC and local unions, and is available to discuss

issues pertaining to public construction in Elkhart. His main focus is always on whether a particular issue is presented in a fair and accurate manner.

Contractors in Elkhart must comply with the City's Ordinance Establishing Building Contractor Registration Requirements. This Ordinance establishes a registration process for projects including new construction, repair, alteration or remodeling, all of which require a building permit.

Contractors must show financial responsibility including proof of insurance as well as compliance with Indiana's Worker's Compensation Act.

Mayor Moore looks to this Ordinance to help ensure fair competition and good labor conditions on public construction projects to protect contractors and workers on public works projects.

According to Mayor Moore, "Every contractor and worker involved with the City of Elkhart should be treated fairly." It is the III FFC's experience that Mayor Moore lives up to these words.

For more information about the City of Elkhart, visit their website at <http://www.elkhartindiana.org>. ■

# Successful projects Are built with teamwork.

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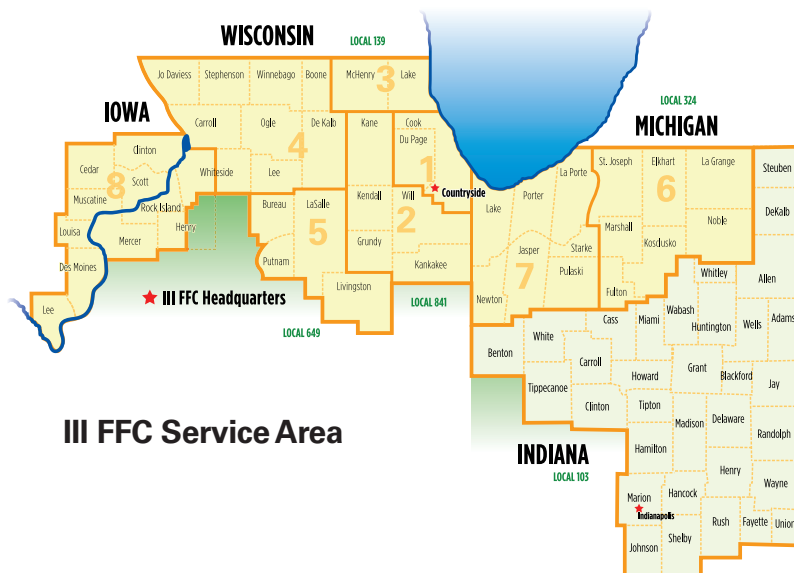
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**III FFC Service Area**