

# 2009



## Government Relations Committee Annual Report

This report presents a snapshot of key statutory, regulatory, legislative and executive agency changes during the 2009 calendar year which may impact mechanical contractors in the Chicagoland area. This report is presented by the Mechanical Contractors Association Government Relations Committee to MCA's members and contributors of the Piping Education Council.

Prepared by Evan Williams

---

# Table of Contents

<b>Introduction</b> .....	<b>1</b>
<b>Taxes and Fees</b>	
Cook County Sales Tax.....	1
Increased State Tax on Partnerships, LLCs, and LLPs Repealed.....	1
Tax Delinquencies.....	1
Cook County Business Fee.....	1
Chicago Business License .....	1
Chicago Head Tax Moratorium .....	2
Chicago Parking Meter Increases.....	2
Increased State Vehicle Fees.....	2
State of Illinois Sales Tax .....	2
<b>Payment and Liens</b>	
New Mechanics Lien Notice Required .....	2
Prompt Payment .....	3
<b>Public Agency Contracting</b>	
Design Build.....	3
Contractor Registration.....	3
Minority, Female & Veterans Business Programs.....	3
Disabled Business Bid Preference .....	4
Subcontract Reporting & CDB Bid Communications.....	4
Building Information Modeling.....	4
<b>Codes, Regulations, Permits and Inspections</b>	
Chicago Energy Code.....	4
Statewide Energy Code .....	4
Chicago Inspections.....	4
Chicago Permits.....	4
Diesel Emissions .....	5

# Table of Contents

## Your Labor Force

Illinois-Resident Workers on Public Projects .....	5
State Capital Construction Illinois Resident Mandate .....	5
Minority and Female Apprentices on Stimulus Projects.....	5
E-Verify .....	5

## Illinois Prevailing Wage

Summary .....	6
Notice of Prevailing Rate to Subs or Face a Penalty .....	6
Broad Coverage of Work Falls Under PWA .....	6

## New Construction Projects and Project Financing

State Capital Program .....	6
State Support for Alternative Energy Projects .....	7
Residential On-Bill Financing.....	7
Stimulus Funds for HVAC System Rebates.....	7
Public Schools Energy Efficiency Grants.....	7
School Construction Grants.....	7
TIF Districts and Green .....	8

## Cell Phones and Email When Driving

State School and Construction Zone Ban.....	8
State Email and Text Prohibition.....	8
Chicago Cell Phone Penalty .....	8

<b>Concluding Notes .....</b>	<b>8</b>
-------------------------------	----------

### Special Thanks to the MCA Government Relations Committee:

David Nelson, Chair Nelson Piping Co.	Nick Marino Great Lakes	Chris Scheck Scheck Mechanical	Selena Worster Mechanical, Inc.
Steve Bartley Martin Mechanical	Michael McCombie F.E. Moran	Richard N. Scheck Scheck Mechanical	John Stern (ex-officio) MCA President Dahme Mechanical
Michael O. Cullinane Mechanical, Inc.	John Reynolds Independent Mechanical	Edward Usher Ideal Heating Company	

## INTRODUCTION

On or before January 1, hundreds of new law changes have taken effect. Some of those may have a specific impact on your company. The Mechanical Contractors Association Government Relations Committee presents this report as a general resource to members of the Mechanical Contractors Association and the Piping Education Council. The following presents a brief summary of some of the actions taken at the federal, state and local level which may impact your company.

## TAXES AND FEES

**Cook County Sales Tax:** Beginning July 1, 2010, the sales tax in Cook County will drop from 10.25% to 9.75% after the County Board cut in half the 1% sales tax increase that initially went into effect on July 1, 2008. The County's portion of the sales tax will drop from 1.75% to 1.25% on July 1, 2010. The State portion of the sales tax is 6.25%.

**Increased State Tax on Partnerships, LLCs and LLPs Repealed:** A July 2009 tax law change in the Personal Property Replacement Tax increasing some contractor's tax burden as much as 50% for the 2009 tax year was repealed on December 16, 2009. That tax change would have required that partnerships, limited liability companies (LLCs), and limited liability partnerships (LLPs) pay the 1.5% Personal Property Replacement Tax on professional fee income in addition to the 3% personal income tax on distributive share income that each partner is already required to pay. With the December 16 repeal, current tax law in this area remains the same as it was prior to July 2009.

**Tax Delinquencies:** The City of Chicago now prohibits issuance of building permits to those that have debt owed to the City or State (this includes debt owed by anyone that owns 25% or more of your company). City zoning decisions will be prohibited when debt is owned by anyone owning more than 7.5% of the subject property or who owns 7.5% of the applicant entity that applies for the zoning change. On January 20, 2010, President Obama signed an Executive Order mandating that federal agencies bar tax delinquent contractors from receiving government work. Moreover, the President authorized the IRS to review contractor filings to ensure compliance.

**Cook County Business Fee:** Effective May 1, 2010, Cook County will require businesses located in unincorporated Cook County to register with the County and pay a \$40 fee for a general business license.

**Chicago Business Licenses:** In 2010, the City of Chicago will be revising the business license process so that owners can choose between a two-year and four-year license and pay a fee that is proportional to the license term.

**Chicago Head Tax Moratorium:** In an effort to promote job creation, on January 13, 2010, the Chicago City Council approved an ordinance to temporarily eliminate the city's \$4 per employee per month Employers' Expense Tax or "head tax" for newly hired employees. Employers who were not required to pay the tax in the previous tax year will not be required to pay the tax in the current tax year. For employers who owed less in the previous tax year than they do in the current tax year, the employer will only be obligated to pay the amount of the tax owed in the prior year. The new ordinance affects the tax years that end on June 30, 2010 and June 30, 2011 and applies only to employers that are located within the corporate limits of the City for at least twelve months prior to July 1 of each tax year. The existing Employers' Expense Tax applies to businesses that employ 50 or more full-time workers or employees that perform 50% or more of their work service per calendar quarter in the City of Chicago.

**Chicago Parking Meter Increases:** As part of the December 2008 deal where the City of Chicago leased its 36,000 parking meters to LAZ Parking for \$1.2 billion, parking meter rates in the City increased on January 4, 2010. Parking meter rates will rise from \$3.50 an-hour to \$4.25 an-hour in the Loop and downtown area. In the neighborhoods, parking meter rates will go from \$1.25 an-hour to \$2.50 an-hour. Rates will increase again in 2012 and 2013 up to \$6.50 per hour. \$270 million from the parking meter lease deal was used to close the City's 2010 budget in lieu of additional City tax or fee increases.

**Increased State Vehicle Fees:** To pay for bonds issued in relation to the state's \$28 billion capital construction program, state fees for vehicle registration increased from \$78 to \$98, transfer of vehicle titles increased from \$65 to \$95, and drivers licenses fees increased from \$10 to \$30. These fee increases went into effect on September 1, 2009.

**State of Illinois Sales Tax:** Illinois has increased the sales tax on candy, non-carbonated beverages, and certain grooming and hygiene products from 1% to 6.25%. Also of note, to fund the state capital program, Illinois has legalized video poker, with payouts to be taxed at 30%. The state has also increased taxes on beer by 24%, wine by 90% and liquor by 90%. All of the above tax increases went into effect on September 1, 2009.

#### PAYMENT AND LIENS

**New Mechanics Lien Notice Required:** Effective January 1, 2010, a contractor for improvements of an owner-occupied single-family residence must give the owner written notice within 10 days after recording a lien against any property of the owner. The notice is served when it is sent or personally delivered. If timely notice is not given and, as a result, the owner has suffered damages before notice is given, the lien is extinguished to the extent of the damages. The mere recording of the lien claim is not considered damages. This new law does not apply to subcontractors of a general contractor on the project. The law applies only to contracts entered into after January 1, 2010.

**Prompt Payment:** MCA and its allies defeated legislation by the Governor that would have removed the late penalty fee for failure of the state to promptly pay contractors. In 2008, CDB paid out over \$500,000 in prompt payment interest fees. MCA has been active in strengthening Illinois' prompt payment laws, including enactment of prompt payment legislation for all private contracts and strengthening laws for state and local government procurement. We continue to advocate for a 5% statewide cap on retainage amounts for private projects, with that amount reduced to 2.5% upon 50% completion.

### **PUBLIC AGENCY CONTRACTING**

**Design Build:** The State of Illinois continues to utilize the design build (DB) methodology and has started its second DB project. Statutory authority granted in 2009 will extend the state's authority to utilize design build through 2014 and may allow the state to tinker with a combination of design build and building information modeling (BIM). The Chicago City Council in April granted the City the authority to utilize DB, while the Chicago Park District earned state approval, effective August 28, 2009, to begin using DB. The public building commissions in Illinois were previously given statutory authority to utilize design build.

**Contractor Registration:** Effective in 2009, all contractors who do work for the State of Illinois, or bid to do work for the State of Illinois, in an aggregate amount of \$50,000 or greater, must file a registration form with the Illinois State Board of Elections. Contractors must file changes to their registrations as they happen, provide copies of the paperwork to various entities and are prohibited from contributing to Illinois executive officials or candidates for executive office. For more information, please contact the Illinois State Board of Elections (<http://www.elections.state.il.us/BusinessRegistration/Welcome.aspx>).

**Minority, Female & Veterans Business Programs:** The Illinois Capital Development Board (CDB), due to legislation effective August 25, 2009, will no longer allow contractors to remedy deficiencies in meeting minority or female subcontractor goals following the bid opening. The actual Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) firms that will be used must be listed in the proposal submitted to CDB. CDB's Office of Fair Employment Practices provides assistance to contractors seeking qualified MBE and WBE partners. On a related note, the State of Illinois has established a task force that will set contracting goals for businesses owned and controlled by qualified service disabled veterans.

The City of Chicago in 2009 extended its MBE and FBE program, with few changes, through 2015. In relation to the failed Olympics bid, the City Council did mandate that any Olympic construction would be completed with 30% procurement participation for minority firms and 10% for women-owned firms.

**Disabled Business Bid Preference:** The City of Chicago, effective in January of 2009, now allows for a bid incentive of between ½% and 2% of the contract base bid for contractors that include participation of Business Enterprises Owned by People with Disabilities (BEPD) as prime or sub contractors on construction projects.

**Subcontract Reporting and CDB Bid Communications:** A new ethics and procurement statute, effective July 1, 2010, will regulate how much communication contractors may have with the Capital Development Board during the procurement process and will require that contractors provide copies of their subcontracts and the subcontract amounts to CDB for posting on the internet.

**Building Information Modeling:** CDB is expected to implement a requirement in 2010 that Building Information Modeling (BIM) be utilized by architects and engineers for new projects with a value greater than \$10 million, and for select projects between \$2 and \$10 million. The bid drawings will still be required to be submitted in 2D. For contractors, BIM may be used for new construction single prime and design build projects of \$10 million and over. MCA contractors and staff assisted CDB in developing the BIM guidelines as well as in their review of performance contracting, which will be utilized in a unique way to build a new powerhouse for Eastern Illinois University.

#### **CODES, REGULATIONS, PERMITS AND INSPECTIONS**

**Chicago Energy Code:** Effective on April 22, 2009, the new Chicago Energy Conservation Code went into effect. The code is modeled on the 2006 International Energy Conservation Code. Work is already underway at the City to update the City's new energy code from the 2006 to the 2009 version of the International Energy Conservation Code.

**Statewide Energy Code:** Effective August 18, 2009, the 2009 edition of the International Energy Conservation Code went into effect for all private commercial building projects in Illinois where a building permit is issued by a municipal or county government. For any publically-funded projects, the 2007 ASHRAE 90.1 standard is also applicable for design and construction as it relates to energy efficiency.

**Chicago Inspections:** Effective January 1, 2010, the City has removed annual inspections for mechanical ventilation and mechanical refrigeration systems. New "super annual" inspections will be at the judgment of the City Building Commissioner when public safety would be served. MCA and Pipe Fitters' Association Local Union 597 are in ongoing discussions with the Department of Buildings over a City proposal to push all downtown ventilation, refrigeration, and boiler inspections to third party entities.

**Chicago Permits:** In 2009, the Department of Buildings revised its permit fee schedule and altered the permit request process. At our October 27, 2009 regular business meeting, Elizabeth Scanlon from the City of Chicago Department on Buildings presented an overview of

the City's new permit fee process. Also, recall that permit expeditors are now required to be licensed by the City.

**Diesel Emissions:** As part of a revamp of the City of Chicago's air emissions ordinance, including new asbestos standards and various permit fee changes, the City has prohibited diesel vehicles to stand with the engine running for more than a total of three minutes in any sixty minute period. The Cook County Board, effective May 19, 2009, passed detailed diesel emission standards that require contractors to utilize diesel emission controls on vehicles and generators.

### YOUR LABOR FORCE

**Illinois-Resident Workers on Public Projects:** The Employment of Illinois Workers on Public Works Act specifies that contractors on all public works projects (including state, county, municipal, etc.) must utilize Illinois residents on those jobs. Contractors may use up to 3 non-resident executive and technical experts on each project. While not new, the Employment of Illinois Workers on Public Works Act kicks in when state unemployment is higher than 5% for two months. Given Illinois' 11% unemployment rate, we anticipate this statute to remain applicable for all of 2010, if not longer. To date, enforcement has been sporadic.

**State Capital Construction Illinois Resident Mandate:** For work performed under the new state capital construction program in 2010 and going forward, 50% of the total labor hours on the projects must be performed by residents of the State of Illinois. Enforcement of this provision will be performed by the Illinois Department of Labor.

**Minority and Female Apprentices on Stimulus Projects:** Legislation effective in July 2009 allows the state Department of Commerce and Economic Opportunity (DCEO) to identify certain federal stimulus projects in amounts over \$5 million where contractors must utilize minority apprentices for not less than 20% of the total apprenticeship hours on the project and utilize female apprentices for not less than 10% of the total apprenticeship hours on the project. Of note, should the City of Chicago have been awarded the Olympics, 10% of the Olympic construction hours would have been required to be worked by minority and low income apprentices who had matriculated from the Chicago Public Schools or Chicago City Colleges.

**E-Verify:** Effective September 8, 2009 for all federal contract solicitations or contracts of \$100,000 or more issued after that date, E-Verify must be used by contractors to verify their employees' eligibility to work in the United States. E-Verify is a free web-based system that compares information from the Employment Eligibility Verification Form (I-9) against federal government databases to verify workers' employment eligibility. Companies awarded a contract with the E-Verify clause are required to enroll in E-Verify within 30 days of the contract award date. E-Verify must be used to confirm that all new hires, *whether employed on a federal*

*contract or not*, and existing employees directly working on these contracts are legally authorized to work in the United States.

### **ILLINOIS PREVAILING WAGE**

**Summary:** A number of new changes have been made to Illinois' Prevailing Wage Act (PWA), which is the State's version of Davis-Bacon. Please pay careful attention to the State PWA and the changes described below as there are some unique provisions in that statute that differ greatly from the federal Davis-Bacon Act and from neighbor state prevailing wage statutes.

**Notice of Prevailing Rate to Subs or Face a Penalty:** Current PWA law provides that a public body must provide proper written notification (often in the bid documents) that the project is covered under the Illinois Prevailing Wage Act. Likewise, contractors must notify subcontractors in writing that the project is covered under Illinois prevailing wage law. Starting January 1, 2010, public bodies must notify contractors in writing and contractors must notify subcontractors in writing that a project falls under the PWA when the contract is awarded with or without a public bid, contract, or project specification.

Contractors that fail to provide proper written notification to a subcontractor that a project is subject to the Act will be held financially responsible for any interest, penalties or fines. Similarly, public bodies that fail to notify contractors that a project is subject to prevailing wage requirements will be held responsible for any interest, penalties or fines. Please note that regardless of whether they were properly notified, contractors that fail to pay the proper wages to their workers are still responsible for all back wages owed to those workers. The consequence of failure to notify applies to work performed pursuant to bids, contracts, purchase orders, or project specifications issued or entered into on or after January 1, 2010.

**Broad Coverage of Work Falls Under PWA:** Legislation passed in 2009 broadens the definition of "public works" covered under the PWA to include all projects funded in whole or in part through bonds, grants, loans or other funds made available by or through the State or any of its political subdivisions. Demolition of public works is also included in PWA. Political subdivisions include municipalities, counties and state agencies, such as the Illinois Finance Authority, the Illinois Housing Development Authority and regional economic development authorities. This means that jobs that may appear to be private construction may actually fall under State prevailing wage.

### **NEW CONSTRUCTION PROJECTS AND PROJECT FINANCING**

**State Capital Program:** Effective July 13, 2009, the State has authorized \$28 billion in capital projects over a three year period. The capital plan provides \$1.5 billion for primary and secondary school construction, \$1.4 billion for university buildings, and \$875 million for environmental water projects. The state Capital Development Board (CDB) will oversee

approximately \$4 billion in spending under the program. The State capital program has been slow to ramp up due to problems issuing bonds for the program. Bond issuance has been slowed by the State's poor bond rating as well as lack of revenue from sources, such as video gaming, tabbed for retirement of the construction bonds.

**State Support for Alternative Energy Projects:** The State has legislated aggressive renewable energy mandates for wind, solar and clean coal. In an effort to encourage alternative energy facilities to be built in the State, the Illinois Finance Authority has been given statutory authority to issue bonds and to provide guarantees to back clean coal, wind, biodiesel and biomass projects. A related program allows the Illinois Finance Authority to award full or partial low-interest loans for engineering studies, feasibility studies, research studies, and construction costs of wind generation projects and solar generation projects for school districts and community college districts. For more information please visit: <http://www.il-fa.com/energy/>. Additionally, legislation effective July 1, 2009 allows new wind power facilities to be considered a high impact business and qualify for certain tax exemptions under Illinois Enterprise Zone law.

**Residential On-Bill Financing:** Legislation effective in July 2009 attempts to create a private funding mechanism for residential and small commercial owners to purchase and have installed new energy efficient equipment through a pass-through on their electric or gas utility bills. The 3-year pilot program will pair utilities, costumers, and lenders together and allow consumers to purchase the new equipment with a loan and pay the lender back via a charge on their monthly utility bill.

**Stimulus Funds for HVAC System Rebates:** On January 31, 2010, the State of Illinois made available to homeowners almost \$12.4 million in rebates funded by the federal stimulus program for energy efficient equipment. The first phase of the program provides rebates on high-efficiency HVAC systems and water heaters, while the second phase targets other home appliances. Contractors participating in the ComEd, AmerenIU, or Participating Energy Efficiency Contractor Network (<http://www.mwalliance.org/resources/peec-network>) will be allowed to offer residential users a rebate on qualifying residential HVAC equipment. Residential water heaters, including gas-condensing water heaters, electric heat pump water heaters, gas storage water heaters and gas tankless water heaters will be eligible for a 25% point of sale rebate at participating retailers.

**Public Schools Energy Efficiency Grants:** The fiscal year 2010 Illinois budget bill created a program providing grants of up to \$250,000 for energy efficient projects at Illinois public schools. Twenty percent of the grants must go to the Chicago Public Schools. No money has yet been appropriated by the General Assembly for this grant program.

**School Construction Grants:** The Illinois General Assembly created a construction grant program for school districts to construct early childhood facilities; however, no money was appropriated for the program. A similar grant program was created to fund charter school construction, with those schools mandated to receive LEED silver certification. Twenty percent

of the grants for each of these programs are earmarked for the Chicago Public Schools. No money has been appropriated to fund either of these programs.

**TIF Districts and Green:** The City of Chicago now allows the costs of homeowner energy audits to be an eligible expense under the Tax Increment Finance District (TIF) Neighborhood Improvement Program (NIP). The NIP exists in 8 TIFs and provides grants to homeowners at or below 120% of the Chicago area median income to perform repairs and other improvements to their homes. A previous ordinance allowed energy audits under the Small Business Improvement Program, also available in some TIFs. Effective January 1, 2010, the State will allow "redevelopment project costs" in TIFs to include any direct or indirect costs relating to LEED certified construction elements.

### CELL PHONES AND EMAIL WHEN DRIVING

**State School and Construction Zone Ban:** Starting January 1, 2010, Illinois law bars use of cell phones in school and construction zones. There is an exemption for using the phone in voice-activated mode. It is unclear if any other hands-free devices (*i.e.*, a wireless earpiece) are exempted.

**State Email and Text Prohibition:** Effective January 1, 2010, state law prohibits composing, sending or reading text messages, instant messages and e-mail on a cell phone or surfing the internet while driving. The ban includes composing, sending or reading on personal digital assistants and portable or mobile computers. GPS navigation systems are exempt. Drivers may use electronic communication devices when their vehicle is stopped and in neutral or park.

**Chicago Cell Phone Penalty:** The City of Chicago has implemented a \$100 fine for using a cell phone without a hands-free device while driving, increasing the fine to \$500 if ticketed for the offense while involved in an accident.

### CONCLUDING NOTES

The foregoing report is presented for the general use of MCA members and Piping Education Council contributors in reviewing some actions of federal, state, and local government during 2009. This report is not intended to be comprehensive of all actions of government and contains only items that may be of general interest to the majority of signatory contractors. For further information, please contact Evan Williams at [ewilliams@mca.org](mailto:ewilliams@mca.org).