

FALL | 2007

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Cover photo: Kim Alward, Brenner Excavating, Inc., working on Hopkins Athletic Fields Project.



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MITA Board Member Kurt Poll with village kids in Rwanda.

MITA Member Travels to *Africa*

Kurt Poll, MITA board member and president of Grand Rapids based Kamminga & Roodvoets, Inc., has taken time away from his busy construction business to visit Africa four times over the last three years. Read on for the inspiring story.

Q: When did you go to Africa?

A: I have been on 4 trips in the last 3 years beginning in October 2004. Each trip has averaged about 2½ weeks long.

Q: Who organized the trips?

A: The trips were organized by World Mission www.worldmission.cc and Congo International Ministries www.congoim.org. The two organizations are both located in West Michigan and are working together.

Q: How did you become interested in Africa?

A: My first contact with World Mission was during the construction of M-6. Kamminga & Roodvoets purchased material for embankment on the M-6 / US 131 from the organization's founder, Paul Land. (Paul Land is Terry Lynn Land, secretary of state's, father). A significant portion of the proceeds from the 1.8 million cyds of material were donated to World Mission for projects in Africa. In the spring of 2004, I was invited to visit some of the sites where the organization had used the money. After a little encouragement from my at that time eight-year-old daughter I agreed to go.

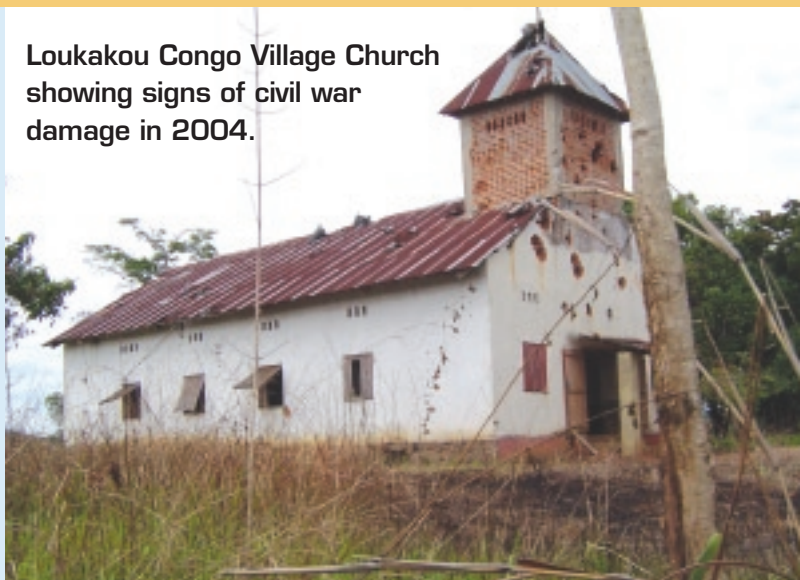
Q: What was the overall purpose of the trips?

A: The overall purpose is to distribute audio Bibles in the people's native language. The Bibles are self-contained units that have solar panels because of the lack of power in many areas. The need is great because in some areas the illiteracy rate is over 75 percent. We distribute Bibles to people in preselected areas that will have the most impact. We find when an area is revisited that an average of 12 people gather around at a time to listen. I have also visited a church of over 200 people that was started from one Bible being placed in the village less than two years earlier.

In Africa, the people are not different than they are in any other

Continues on pg. 43

Loukakou Congo Village Church showing signs of civil war damage in 2004.



Loukakou Congo Village Church after repairs were made in 2005 by villagers and a team of 13 from Michigan, including Kurt Poll.



MITA Board Member Kurt Poll, far left in front row, participating in audio Bible distribution in a remote Congo village.



Audio Bible distribution in Kigali, Rwanda.

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Letters to MITA

Dear Bob:

Utility placement, whether it is telephone or electric, creates for us many opportunities to interact with MIOSHA. We at Mid State Utilities continue to take pride in not having too many encounters with them. However, as you know, at some point in time there will be an incident which requires legal issues.

I would like to take this time to say thank you for your assistance and guidance concerning this particular case in Spring Lake. Your services and all other services provided by MITA are very much appreciated.

Daniel A. Phillips
President – Mid State Utilities, Inc.

Dear Mike:

Enclosed is my contribution to the MITA-PAC to enable MITA to continue your efforts in identifying unjust and damaging taxes to the construction industry and getting them changed or modified so we are not taxed out of business.

In my 30-plus years working with Yalmer Mattila Contracting, Inc., a small general contracting firm in the Upper Peninsula, nothing has frightened me more than the original state's business tax plan. Its method of computing taxes would have cost our company a large amount of smaller projects because they would have been cost prohibitive.

Keep up the good work!

Thomas H. Cholette, P.E.
Vice President-Coordinator

Dear Nancy Brown,

Thank you so much for taking the time to come and speak with our staff.

Attached are the few changes we made to the draft. We loved the article you wrote.

Thanks again.

Nick Ginsberg
Brenner Excavating

Dear Keith:

On behalf of the Michigan Townships Association, thank you for the time you took out of your busy schedule to help make our 2007 Summer Legislative Forum a success.

From the comments that we received on our evaluation forms and verbally, we know that the delegates that attended the Trans-

Continues on pg. 19

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Member Voice:

How is the Legislature Doing?

From time to time we ask MITA members to comment on issues of importance to our industry. Some of the answers are published in Cross-Section Magazine.

In September, a week before the Legislature and governor averted a state government shut-down, we asked MITA members the following question:

Do you think the Legislature is doing a good job? How would you rate them? Please give us your comments.

Here are the responses, which include comments sent to us before and after the Legislature and governor reached a compromise on October 1.

Gregory A. Pollard

Advance Concrete Products

I'm not real up on how the Legislature has been with regard to our industry. I'm more concerned about how our legislature is doing on issues of importance to the state of Michigan. Ultimately if they are doing their jobs correctly, meaning get away from their usual partisan politics and getting away from what's good for me only or my district only, then our industry will be affected positively. Good, well-maintained roads and bridges and a non-overburdened infrastructure (electrical, telephone, sewer and sanitary) are keys to a healthy state. When these areas suffer from under funding because of decisions (or lack of) by the Legislature that limit growth due to lobbyist pressure from the teachers' union on health insurance contract costs (just one example), I have a problem. When we are told taxes must be raised on those of us still here because we have lost population, I have a problem. A \$950 million cut in spending on an approximately \$45 billion budget is nothing. A second grader could come up with that. We need people with a good moral compass and a backbone, making common sense decisions that make for long-term solutions and we are not getting that.

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Member Profile



From left to right:
Kevin Brenner,
Nick Ginsberg,
Jayne Brenner and
Kelli Biesbrock
(secretary).

With just one bulldozer and one crew to handle the dirtwork and his wife, Jayne, to handle the paperwork, Kevin Brenner launched Brenner Excavating 31 years ago in Hopkins, Mich.

While the business and economic climate of Michigan changed from better to worse over the years, his southwest Michigan company maintained a steady flow of work and a loyal base of 25-30 employees. Kim Alward, safety supervisor, has been with the company for 28 years. Nick Ginsberg, estimator, started four years ago.

"They treat us like family," said Nick, who landed his first job at Brenner Excavating after earning a construction engineering degree. He had plans to quickly move on after a year, but he changed his mind. "Kevin and Jayne are always willing to help, and have great respect for all their employees. In turn, we respect them and do a great job."

Those jobs this year include a very busy half mile of work – 174th Street in Ferrysburg. The road project also includes storm sewer, culvert, water main and a bike path. Another job is the Hopkins Athletic Site, which includes practice and playing fields for boys' baseball and girls' softball teams. The project began this fall and is expected to be completed by spring of 2008.

"We are very busy in spite of the state's economic climate," said Kevin, whose MDOT pre-qualified company specializes mainly on road building and site work, in addition to some utility and underground work. "Because of the poor economy we have stretched the boundaries of where we do work and now go anywhere within a

radius of 60-70 miles of Allegan County."

Kevin and Jayne say they have no plans to move their business out of state. They raised their family of three children in Hopkins, one child is still in high school, and if they moved to Florida, Jayne jokes, where would they have for those long winter vacations?

However, they did go south once for work – but it was strictly a charity project. Brenner Excavating was part of the 2003 Victory Junction Gang Camp Project in North Carolina. The camp for seriously ill children was developed in honor of Adam Petty, a fourth-generation NASCAR driver, who was tragically killed in 2000 during a race track accident.

"Kevin would stay there for two weeks at a time with our employees, who focused on the wetland mitigation and site work for the project," Jayne said.

She said it is good to work close to home; and, with over two dozen jobs this year alone, Brenner Excavating has plenty to be grateful for – including being a member of MITA. Members since 1994, the company relies on MITA for yearly safety training and certifications, which MITA provides them free of charge during a spring safety meeting at their office in Hopkins. In addition to many other available services, MITA also provides Brenner Excavating ongoing assistance with MIOSHA issues.

"We've had three MIOSHA inspections this year," Safety Supervisor Kim Alward said with a smile. "No citations!"

Brenner Excavating, Inc.



174th street project in Ferrysburg.



Sue Langley working tractor at Hopkins Public Schools Athletic Fields project.



Hopkins Athletic Fields Project: Kim Alward is in the scraper on the right and Tim Miller is in the grader on the left.

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See more Brenner Excavating
photos on page 19.



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Magazine Evaluation

CROSS SECTION

Thank you for reading and/or advertising in *Cross-Section Magazine*. We value your input and ask that you please complete the following form and fax it to Nancy Brown at MITA (517-347-8344). We are constantly striving to meet your interests with our stories, so your comments are very important to us. Thanks for your participation in this survey.

Please rate each area of the magazine by circling a number.
One is poor; five is excellent.

Executive Vice President Comment	1	2	3	4	5
Vice President of Government and Public Relations Comment	1	2	3	4	5
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MDOT Environmental News	1	2	3	4	5
Questions and Answers	1	2	3	4	5

Which articles did you find most helpful?

Which articles did you find of least value?

Are there any topics you would like to see covered in future issues of *Cross-Section Magazine*?

What is your overall impression of *Cross-Section Magazine*?

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Associate Member Profile



Left to right: Chris Claeys and Stan Racinski from Rain for Rent's Michigan office.

Rain for Rent is the largest nationwide company of its kind and is committed to providing solutions for water handling, irrigation and temporary liquid storage problems.

A current project in Bay City demonstrates what sets Rain for Rent apart from other similar companies, according to Chris Claeys, sales representative at Rain for Rent's office in Brownstown, Michigan and Stan Racinski, branch manager.

"Our equipment is handling the dewatering aspect for the Bay City project, however, the soil in the area is contaminated with Dioxin and the water cannot be discharged as is," Claeys said. "We were able to design and install a temporary water treatment system on site to filter and treat the contaminated water and discharge clean water back into the river. Typically, this would need to be handled by two or three different sub contractors and suppliers. We are supplying a complete turnkey solution to the problem."

Rain for Rent's extensive website (www.rainforrent.com) focuses on their motto: "Complete Solutions...Proven Results". Dozens of detailed projects stories from across the country prove their point: they can rent you pumps, pipes, tanks and filtration systems. And the company can handle just about anything you can dream up regarding dewatering, construction, environmental, mining, pipeline and more.

A Michigan success story may not directly involve construction, but it shows how ingenious Rain for Rent is when faced with a

problem. An operator at a Michigan oil refinery had inadvertently left a bypass valve open during final clay filter treatment of jet fuel and filled a 70,000 barrel tank with contaminated product. The refinery's options were to reprocess the fuel or sell it as a lower grade product. In either case, the cost would be prohibitive.

Rain for Rent responded to the problem with a creative solution. A dual 1,000-pound carbon vessel was loaded with 2,000 pounds of the identical clay media used in the refinery's treatment system, followed by a PF400 bag and cartridge filter to remove any clay particles from the final product. A 3-inch stainless diaphragm pump, along with 1,000 feet of 4-inch hose, was used to move the product. The system was contained in a 12' x 50' spillguard to prevent soil contamination. The entire system was grounded for safety and the fuel was filtered successfully.

Current projects in Michigan include numerous pump station bypasses and hydro-testing a pipeline in Romulus. In simple terms, Rain for Rent's equipment is used to fill the pipeline with water and pressurize it so that the pipeline owner is able to detect any leaks. Past projects in Michigan include a 2006 EPA Superfund Cleanup Project in Muskegon. The general contractor dredged and cleaned a contaminated creekbed. During the project Rain for Rent provided equipment for bypass pumping as well as a complete turnkey onsite water filtration and treatment system.

Other current Rain for Rent projects in the Midwest include a

Rain For Rent

creek diversion project in Ontario. The company is pumping 60,000 gallons a minute for a pumping distance of 3,000 feet during this environmental cleanup. The project began this summer and is expected to be completed sometime in the fall.

How do potential customers find out about the various projects Rain for Rent can handle?

"We market ourselves in the MITA publications, national publications, and we meet contractors to do project evaluations and estimates that may lead to business relationships," Claeys said. "Telling contractors that we are members of MITA builds instant credibility. MITA is one of the best associations for us."

Branch manager Racinski said they especially like the Industry Night Project Book that MITA produces every year to showcase upcoming underground, road and utility projects. They also find the annual conference trade show in January to be an excellent way to showcase their capabilities.

A member of MITA since 2004, Racinski said that Rain for Rent's business in the Midwest is growing in spite of the economy.

"We had record months in July, August and September," Racinski said. "Oil and gas business is up, and although overall construction-related business is down, we are growing in that business and our percentage of the take is up."

Speaking of oil and gas business: that's how this family owned giant, founded in 1934, got its start. Western Oilfields Supply Company was founded by Charles P. Lake in Bakersfield, Calif. This history in oil partially explains photos on page 18 of President George W. Bush visiting Rain for Rent's corporate headquarters in 2004. The visit highlighted the positive impact of his tax-cut programs on companies, like Rain for Rent, which have allowed them to remain a top industrial rental company in the United States.



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**MEMBER OF MITA
SINCE 2004**

See more Rain for Rent
photos on page 18.

Rain For Rent

Continued from pg.17



Ontario Creek Bypass Project: 60,000 GPM over two miles of fused 18-inch discharge pipe.



Rain for Rent's headquarters in California hosted President Bush in 2004. Seated with President Bush is Rain for Rent's President John Lake.

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Letters to MITA

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Brenner Excavating, Inc.

Continued from pg. 13



From left to right Steve Schweitzer and Kirk Alward at Victory Junction charitable project in North Carolina.



Junior Martinez at 174th street project in Ferrysburg.

portation Funding and Structure session appreciated the opportunity to hear our views. They also enjoyed exchanging ideas with the panelists and being able to ask questions during the session.

Again, thank you for joining us. We appreciated your participation and enjoyed your company. We also hope you enjoyed being there.

David Bertram
MTA Legislative Liaison

Dear Keith:

I've been so busy since we met last week that I did not have a chance to follow up with you.

I cannot thank you enough for taking the time to meet with us on Wednesday evening as well as present to our group on Thursday.

I will be in touch in the future.

Ann Plummer
*American Subcontractors Association
of Southwest Michigan*

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Questions and Answers

Good News for Underground Contractors: State Revolving Fund Loans on the Rise

Questions answered by Chip Heckathorn, Michigan Department of Environmental Quality, Chief of the Revolving Loan & Operator Certification Section

Q: What is the State Revolving Fund and why is it important?

A: The State Revolving Fund (SRF), sometimes referred to as the Clean Water State Revolving Fund, is the primary source of financial assistance available to local units of government to address water quality and public health problems caused by inadequate wastewater infrastructure or non-point sources of pollution. The fund can provide loan assistance at below market rates to fund the construction of projects to address these problems. Compared to open market financing, use of the SRF results in lower debt service costs for the community and its rate payers.

Q: What's the outlook for state revolving fund loans over the next 1-5 years? How does this compare to previous years?

A: Michigan's SRF has been in operation since 1988 and has tendered over 300 loans totaling more than \$2.8 billion. Since the fund "revolves" (that is, loan payments from local borrowers return to the fund and can be used over and over) it will operate in perpetuity. From FY 2003-2006 we saw an annual demand in the SRF that averaged \$215 million/year. We have seen a large increase in demand for SRF assistance, with well over \$500 million in applications in both Fiscal Year 2007 and 2008. We anticipate this trend will continue at least through 2012. We anticipate being able to tender \$2.5 billion in new loans over the next five years.

Q: What is reason for the large increase in demand?

A: The vast majority of the increase can be traced to a number of large projects, many needed to address major long standing combined

sewer and sanitary sewer overflow problems. These projects had been in planning and design for a number of years, and we are just now able to complete the SRF application process. We always knew these projects anticipated coming to the SRF, we just weren't sure when until now. We also see more communities coming to the SRF for projects to repair and replace aging infrastructure that is reaching the end of its useful life.

Q: So far, the state has used very little of the Great Lakes Water Quality Bond Initiative money because of a lack of demand. Do you believe we will utilize the full extent of available bond money now that the demand for money exceeds the amount otherwise available?

A: Although "only" \$47 million in Great Lakes Water Quality Bonds have been sold to date, SRF loans that were tendered in Fiscal Year 2007 (\$465 million) and those that we anticipate in Fiscal Year 2008 (over \$500 million) necessitate the delivery of significant additional capital from that initiative. At this time the state is anticipating selling \$180 million of SRF Proposal 2 bonds each year between 2008 and 2012, the maximum amount/rate permitted by law. In effect, we have already committed a significant portion of the Proposal 2 monies to loan recipients and will deliver funds through the sale of the bonds "just in time" to accommodate disbursements. Even with full utilization of the Proposal 2 authorization, we project the SRF may not be able to fully satisfy demand during that 5-year period.

Q: The Legislature is cutting back on their general fund investments in the revolving funds. Is the state jeopardizing federal dollars and what is the effect of this disinvestment over the long term?

A: To date those cuts have not jeopardized Michigan's access to federal capitalization grants in either the SRF or the Drinking Water Revolving Fund, although if cuts persist the loss of federal funds in future years will occur. The general fund cuts to date (over \$40 million) have, however, significantly reduced lending capacities in both funds and played a role in the need to raise loan interest rates in the programs for Fiscal Year 2008.

Q: The state revolving funds are geared towards fixing aging underground systems, yet there are pockets of tremendous growth in Michigan. What is the state doing to help fund sewer and water delivery systems in booming areas of the state? What other tools are available to help these municipalities?

A: The revolving funds were specifically created to address existing water quality and public health problems, and program restrictions limit the use of the funds to accommodate growth and development. Both the federal government and the DEQ are concerned about the negative impacts of sprawl, and we will continue to focus infrastructure assistance efforts on well planned growth and the redevelopment

Continues on pg. 64



State of Confusion

I know that I'm not alone, but I have simply run out of phrases to describe the recent debacle that occurred over the state's budget mess. What is most regrettable is the message that this display of legislative incompetence has sent across our country, particularly as it may affect a company's decision to set up shop in Michigan. Even the candidates for the presidential election in 2008 are portraying our state as the poster child for legislative ineptness.

It's apparent to this writer that the solution(s) for the improvement of our economy is not all that elusive. For one small example, we need to look no farther than Oakland County which, by all measures, leads the pack in fiscal responsibility and creativity. I am referring to the small move that privatized the food service in the county jail. This move saved Oakland County just short of \$2 million a year. Extending this unit out to the state's correction facilities would, according to some bean counters, result in savings of several hundred million dollars a year. Seems simple but, if it's one thing I've learn in my 30 years of lobbying, nothing is simple in Lansing.

The regulatory agencies in our state also present a problem for those businesses who have Michigan on their list of possibilities for location. DEQ and MIOASHA have, through a gradual evolution, become focused more on enforcement than education. For example, safety recommendations, once a valuable education tool for MIOASHA, have all but disappeared. Their place in the arsenal of educational materials is now occupied by citations even for matters of a frivolous nature that present little if any danger to our employees. Similarly, this paperwork-equals-safety doctrine represents a significant attitude shift in policy. Above all, because the law contains no definition of willful employers are subject to \$70,000 fines and possible criminal prosecution due to the "perception" on the part of a MIOASHA safety officer. Perhaps we should have a warning sign right next to the "Welcome to Michigan" sign at our borders.

On the DEQ side, how many times have you scanned the local news section of the paper to find a frustrated builder or developer who has abandoned a project due to the length of time required to get a permit from this agency? The folks at DEQ nearly went ballistic over the slurry waste from our saw-cutting operations. It's a process we have utilized for many years, and the department had no proof of any human nor environmental concerns as a result of this procedure.

There are a ton of people smarter than me searching for answers to Michigan's problem. I remain optimistic that this will

occur and hope the solution is sooner than later.

Pension Withdrawal Liability

In this issue of Cross-Section you will find an article by a Minnesota law firm that I believe is the most concise and understandable synopsis of pension withdrawal liability that I have read to date.

This matter of pension withdrawal liability is yet another product of federal intervention and is, by its very nature, complicated. In the midst of the emotional furor caused by this federal mandate, it is important that you stay objective on the issue and remember that it is a possible, not inevitable, process. How it possibly could affect you and your business depends on many factors.

It is for this reason that you should read this article and consult with your accountant to gain a clear understanding of the impact of possible pension withdrawal liability.

Prevailing Wages

There is no doubt that the topic of prevailing wages on public works projects could be the subject of an entire issue of Cross-Section.

Whether you support the principle or despise it, the fact remains

Continues on pg. 63



Bob Patzer



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2007—The Year of New Taxes in Michigan

If we look back on the legislative activity of 2007, this year can easily be called the “new tax structure” year for the State of Michigan. Specifically, the new Michigan Business Tax, an expansion of sales tax to include a variety of services and an increased income tax. The one item that MITA has been working so hard to secure – a gas tax increase – was introduced earlier in the year, however, has seen no action by the full body of the legislature to date. With that in mind, I felt it was probably a good time to do a follow up as to the number of tax changes that have taken place at the state level.

SBT Replacement – A New Michigan Business Tax (MBT)

Early in 2007, MITA staff began to notify our membership that a new business tax structure was inevitable due to the need to replace the Single Business Tax (SBT), which was set to expire Dec. 31, 2007. Ultimately, MITA sent out at least 12 bulletins over a four-month period requesting input from members on the various tax plans that were being floated. In the end, numerous member firms stepped up and gave input throughout the process. The eventual outcome was that the MITA staff were able to help secure language that included the following:

- Compensation credits for owners so that the corporation and the individual won't be taxed twice on the owner's income.
- A 12 mill or approximately 30 percent reduction in personal property

tax liability.

- Tangible purchases credit that should allow the purchase of construction materials to be deducted from gross revenues.

- The recognition that sub-contractors should not be included in the gross receipts of a prime contractor.

Once this new MBT was signed into law, MITA continued to ask companies to review the new law in order to get an idea of how this may affect the industry. Initial indications were that the new tax might be a slight increase for the overall industry. However, recently the MITA staff have heard from some companies who are indicating a higher than average increase in the taxes that their company might be paying. Keeping this in mind, we would once again encourage all of our members in all sectors of the industry to have your CPA analyze this law in order to help you prepare for the results of this new business tax in 2008. Please contact MITA to let us know what the ultimate outcome is for your company.

A Balanced Budget – But at What Cost?

Recently we saw our state Legislature and governor deal with the issue of a significant funding shortfall for the 2007-2008 budget. The hole that had to be filled was \$1.75 billion. In order to resolve that problem, our state leaders determined that an increase had to be made in the personal income tax here in our state raising that amount from 3.9 percent to 4.35 percent. They also decided that a variety of approximately 45 services were now to be included in the six percent state sales tax requirement. This new sales tax on services has caused quite an outcry from businesses across the state. In an already struggling economy, many businesses are looking at this new service tax as one more nail in the coffin of Michigan's economy.

With regard to the construction industry, MITA staff worked very hard to make sure that construction was not included in the list of taxed services that were ultimately passed by the legislature and signed into law by the governor.

MITA made the argument that construction is not a luxury nor a choice but rather a necessity. In the end, legislators agreed and the construction industry was omitted from the list of services that are now being taxed, which saved the construction industry a minimum of nearly \$400 million.

Continues on pg. 64



Mike Nystrom

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Vice President of Membership Services Comment

Life is About Contact

Whether it be a spouse, friend or business associate, the quality of your life hinges directly on the quality of your contacts with others. MITA will be launching another new initiative this winter. We are bringing the association to you grass-roots style. I have recognized over the years that many of our members removed from the metropolitan areas seldom participate in MITA events or develop quality contacts with MITA staff. Sure they may read the e-mails and occasionally call for a safety program but they simply have not had the opportunity to develop quality contacts within MITA to fully utilize their association membership. In an effort to provide members with this opportunity I will be selecting areas around Michigan for small MITA gatherings. Stay tuned and watch your mail for a meeting near you.

Watch Your Mail

If you haven't received a monthly mailing yet, you will. In an effort to enhance MITA's communications with members we will be starting monthly mailings. Each mailing will consist of information regarding MITA activity over the previous month, as well as information regarding upcoming meetings. Electronic notifications will still be the timeliest way to receive information from MITA, but this should help in the event you missed an e-mail or meeting notice. Only one packet of information will be sent to each main contact listed for the member. The hope is that the information would then be shared throughout the office.

Public Act 53 Rewrite

Public Act 53, or what is affectionately known as the Miss Dig Act, governs utility locating in

Continues on pg. 65



Rob Coppersmith

MITA Coming Events/Training:

See pages 40-42, and 72-73 for information about upcoming events/training you will not want to miss!



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Vice President of Engineering Services Comment

Davis-Bacon/Prevailing Wage: What We Know Now

As we put the finishing touches on yet another construction season it seems appropriate that we take a little time to recall and summarize some significant Davis-Bacon and Michigan prevailing wage experiences that are important for all of you to understand.

“Di Minimis Rule” Further Defined

Prior to 2004 there were a number of areas of the Davis-Bacon law that were very misunderstood throughout the construction industry, not only here in Michigan but across the nation. Through a series of meetings involving industry, the Michigan Department of Transportation (MDOT), and the U.S. Department of Labor - Wage and Hour Division (U.S. DOL) clarification on the true interpretation of the many of those misunderstood areas was obtained. MDOT documented those interpretations and understandings in their Bureau of Highway Instructional Memorandum 2004-21, Davis-Bacon and Prevailing Wage Compliance, which became the industry guide

for compliance on the issues covered.

Since those meetings in 2004 there developed a basic industry understanding that all workers on a Davis-Bacon eligible project were subject to the “di minimis rule”, i.e. Davis-Bacon wages are not required to be paid if a worker spends less than 20 percent of his/her work week on a Davis-Bacon eligible project. As a result of that industry understanding, U.S. DOL more recently issued a clearer and more definitive interpretation relative to that issue. As it is understood today, the di minimis rule does not apply to workers. Laborers and mechanics who are engaged in construction activities on the site of work are due to be paid the Davis-Bacon wage for every hour they work

Glenn Bukoski, P.E.

Continues on pg. 65



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Director of Safety & Workforce Development Comment

Production and Safety

Completing a job on time is important, but does safety take a back seat to production when time becomes a factor? Contractors are constantly facing stringent guidelines and regulations that may cause employees to take shortcuts when time is of the essence. Safety experts say workers often take unnecessary risks when pressured to complete a task. This is evident when an underground crew lays an extra section of pipe beyond the protection of a trench box; or a worker on a bridge without fall protection; or a worker who walks across four lanes of live traffic and jumps the barrier wall. Does this happen because of pressure to complete a job, or because the foreman allows this behavior?

Time is measured in seconds, minutes and hours not a broken arm, strained back or ultimately a life. Everyone has a role in getting the job done, from the owner to the laborer. Although their roles are remarkably different, pressure is felt from the top down. Unfortunately when pressure is felt in the field, people start taking unnecessary risks. This is evident in MIOSHA citations and even MITA jobsite inspections.

Government enforcement agencies try to correct this behavior through citations and fines. Employers correct it through supervision, discipline and training. The importance of supervision cannot be stressed enough. The role of a qualified person is to monitor the entire operation for potential hazards and unsafe work practices. The qualified person is responsible for disciplining employees who violate safety rules and create hazardous work environments. At the same time, if a qualified person is allowing employees to work in an unsafe manner, the employer should discipline him or her. In addition, any matter dealing with employee conduct safety, or otherwise, should be documented and kept on file for future reference. Training is key to safe work practices, and the more you train or refresh workers' memories on the proper way to perform a task, they are less likely to perform improperly.

A MIOSHA supervisor commented to me recently that she didn't see me in their building much this summer and that "my guys" must be doing a good job. I took this as a compliment. The fact is MITA members are doing better, and they are taking safety seriously. The number of appeals for 2007 is down slightly, which is an indication that safe work practices are a priority and the progression is moving in the right direction.

Traffic Regulators

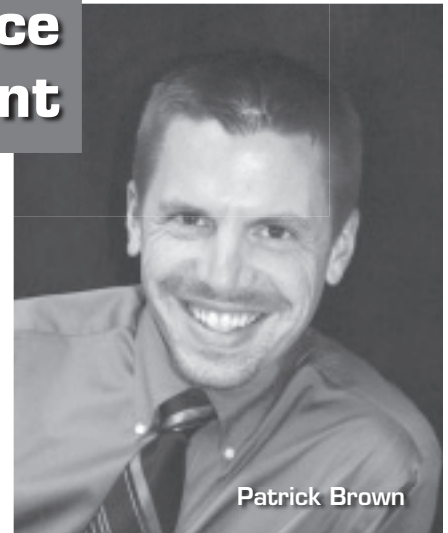
MITA is working with Michigan Department of Transportation (MDOT), Michigan State Police (MSP) and MIOSHA to update the traffic regulator standard. MDOT has expressed a concern regarding the quality of traffic regulator over the past couple seasons. The group has been charged with overhauling the standard from what the regulator is allowed to have at his/her station to typical for signalized intersections. Informational sessions on this issue will begin in January 2008.

The training season is upon us again and MITA has secured another MIOSHA grant to provide additional training to its members. All-trades, trenching excavating and shoring, fall protection, qualified person, first aid/CPR and work zone traffic safety are some of the topics available. Many of these will be available at any one of MITA's four Super Conferences this year. If your company requires any additional training, contact me or Rob Coppersmith. MITA also has a new state-of-the-art training facility to

accommodate just about any size or type of class and it's available to members for their use.

Appeals

In my last article you may recall I commented that some contractors were being inspected as many as 20 times in a three month period. This was not misquoted information from my source. However, MIOSHA has confirmed these numbers are inaccurate. Although the number of times these contractors were inspected over that three-month period was abnormally high from years past, 20 was not an accurate count of those inspections.



Patrick Brown

If you have any questions or comments, contact Pat Brown by e-mail at patrickbrown@mi-ita.com or call (517) 347-8336.

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Clean Water Ballot Proposal: Political Activism Can Pay Big Dividends

Five years ago, the heavy construction industry banded together in a singular mission to provide more money for water and sewer projects around the state. We are now seeing huge benefits from that effort.

Commonly known as the Great Lakes Water Quality Bond Initiative of 2002, the industry strongly backed the ballot proposal and raised \$400,000 towards the election effort. Voters overwhelmingly approved the proposal; and today, that small investment is yielding big dividends.

For 2008, the state anticipates to tender around \$570 million in revolving fund loans. About \$200 million of that money is expected to come from the clean water bonds. That is money that would otherwise not be available had it not been for the upfront investment of the industry. The state expects similar results over the next several years.

Under the proposal the state can borrow up to \$200 million per year until the billion-dollar cap has been reached. Since the proposal was adopted, MITA has spent a great deal of effort in stimulating the actual demand for this money by local units of government. Up until this year, almost none of the bonds had been issued, because the state has been able to fund all applications with existing dollars.

MITA successfully promoted legislation to provide \$40 million of this money in a grant program to pay for project start-up costs. In



Keith Ledbetter

exchange, the municipality was required to complete the project within a specified time period. The program was a huge success and all that money has now been used. Starting last year, revolving fund applications soared by almost 300 percent. MITA is currently working with Senator Jud Gilbert on Senate Bill 495, which is aimed at providing additional incentives to smaller communities. It appears that not only did the S-2 grants stimulate projects in the past two years, but the momentum is continuing. In 2008 the state expects to have hundreds of millions of unmet needs, even after using all available Proposal 2 money.

MITA will continue to work with policymakers and the MDEQ to push for full use of Proposal 2 money. The budget problems at the state Capitol will have an impact on these funds, as debt service payments must come from the state's general fund to pay back the borrowed money.

The underground industry has suffered immensely in recent years as private development and infrastructure investment has all but disappeared. The additional \$200 million a year from the state has been a promising glimmer of hope, thanks to an industry wise enough to invest their time and resources in the political process.

To contact Keith Ledbetter, e-mail him at keithledbetter@mi-ita.com or call 517-347-8336.



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Update

MITA Seeking Clarification of New Sales Tax

Creating a new sales tax on services after midnight has its drawbacks.

In the dead of night last weekend, legislators passed a plan to put a sales tax on some services. Included in the new tax were various "consulting" services and "landscaping" services. At the same time, policymakers exempted construction from the new service tax. So, what happens when environmental consulting and landscaping are part of a construction contract?

The Michigan Department of Treasury is currently trying to determine just that.

In the area of landscaping, MITA has been arguing that adding value and property improvement like planting trees and grass are the last phase of a construction project and therefore should be considered construction rather than a "landscape service". MITA contends that the Legislature intended to tax only landscape maintenance activities, not those activities required for construction.

One area of "consulting services" for the heavy construction industry that could potentially be taxed is environmental and geo-technical consulting. MITA is arguing that property restoration and environmental assessment are required for the construction process and therefore should be exempt as well.

Another conflict that MITA has uncovered is in the area of governmental contracts. Would a government contractor be required to pay sales tax on the work? Initial indications from Treasury suggest that government contracts would not be taxed.

Although it will likely take a while for many of these issues to be fully addressed, MITA encourages members to evaluate the impact the new service tax would have on their business and forward your questions and concerns to our office. In the meantime, we will

October 3, 2007

Bob Kleine, State Treasurer
Department of Treasury
430 W. Allegan Street
Lansing, MI 48922

RE: Clarification on the New Sales Tax on Services

Dear Mr. Kleine:

The Department of Treasury is no doubt busy preparing for a new Michigan Business Tax, implementing a new income tax rate and planning for the new sales tax on services.

The Michigan Infrastructure and Transportation Association (MITA) has been reviewing the new sales tax on services and believe there are some statutory contradictions that need to be addressed quickly by the department to provide clarification.

During the legislative process and late night sessions, MITA was reassured by policymakers that construction services were not included in the new sales tax on services. Now, there are some questions about services that appear in the first print of the referenced NAIC codes that are an essential part of the construction process.

As an example, you cannot build a new construction project without doing necessary landscaping, tree planting, seeding, sodding and other related items. "Landscape services" are a taxable item under the NAIC code reference 56173. We believe that the department should make a clear statement that landscaping during the construction process is exempt from the new sales tax. We believe there is a clear distinction between landscape maintenance on existing property versus landscaping that is done as part of the construction process.

There are similar clarifications that are needed in the area of "consulting" (NAIC code 5416). As an example, environmental and geo-technical consultants are an essential part of the road building and underground construction industries.

Finally, we believe there needs to be a clarification by the department that services on public works projects are exempt from the new sales tax.

Thank you for your time and attention to these important issues.

Sincerely,

Michael A. Nyström

Mike Nyström, Vice President of Government and Public Relations
Michigan Infrastructure and Transportation Association

Bridging the Gap - Paving the Way - Always Digging Deeper

continue to work with the Department of Treasury to ensure that all phases of the construction process are exempted from paying new taxes.

For a complete list of services being taxed, visit www.mi-ita.com and click on the membership bulletin entitled "MITA Seeking Clarification of New Sales Tax."

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Director of Technical Services Comment

ADA Compliance - Why Should a Heavy Highway or Underground Contractor Care?

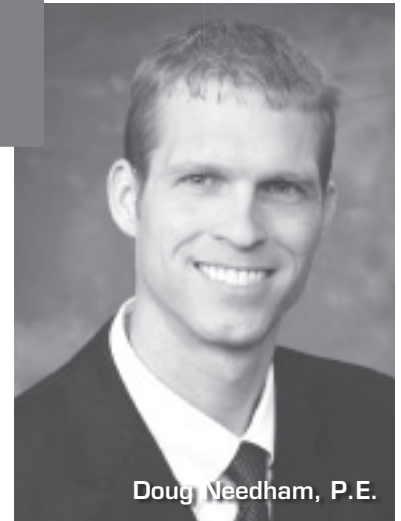
In recent conversations with city officials and contractor members, we have learned that there is a growing awareness of and attention to American with Disabilities Act (ADA) compliance. These conversations come on the heels of the wave of trial lawyers who have won several lawsuits against local agencies due to the lack of enforcement of ADA standards during construction projects. As a result, local agencies have instituted zero tolerance policies on deviations from ADA requirements.

On July 26, 1990 the Americans with Disabilities Act (ADA or the Act) was enacted. This act provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The regulation extends beyond prohibiting discrimination on the basis of handicap in federally assisted programs and activities to state and local governments that do not receive federal financial assistance.

According to the Code of Federal Regulations, public and private entities are required to construct any new facility (or alter an existing facility) to be used in providing designated public transportation services so that the facility is readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs.

Effective November 29, 2006 the U.S. Department of Transportation amended the ADA regulations to adopt as its new standards, the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Up until this point, the Act did not contain a reference to a standard and only utilized the ADAAG as a guide. Now there is a document that defines ADA standards. These

Continues on pg. 67



Doug Needham, P.E.



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Jerrold M. Jung Appointed to State Transportation Commission

Longtime AUC, MRBA, and now MITA member, Jerrold M. Jung has been appointed by Gov. Granholm to the Michigan State Transportation Commission.

Jung is currently dealer principal for Michigan CAT of Novi. Michigan CAT has been selling, renting, and servicing heavy construction equipment in Michigan since 1944. A Birmingham resident, he is a graduate of Birmingham Seaholm High School and Tulane University. His commission will expire on December 21, 2009.





TOOL BOX TALKS

General Safety Rules

Before you get started:

There are five safety tips that apply to the whole industry. If you practice these five things, you could make a difference.

- KNOW YOUR JOB.
- BE ALERT.
- EXPECT THE UNEXPECTED.
- USE GOOD JUDGEMENT.
- ALWAYS THINK SAFETY.

These tool box talks have been designed to include all of the information your company should be able to include in a five-minute session. MITA suggests that you document this activity with the sign in sheet provided and keep it on file for future reference.

Often workers are injured by putting themselves in hazardous situations or by ignoring simple procedures or safety rules designed for their own protection. The following General Safety Rules are often violated. However, they are designed with your protection in mind.

- Do not use tools or equipment you have not been trained to use.
- When working in excavations, always stay within the protective system (trench shields, shoring, sloping, etc...).
- Never climb on shoring, shields or sloped excavation walls.
- Never ride on equipment or lift hook, chain, cable or sling.
- Always test the atmosphere of a confined space before entering.
- Never enter a confined space unless you have been trained and authorized by the company's qualified person to do so.
- Assure proper traffic set up, signage and trained flaggers.
- Always wear fall protection while working more than 6' off ground.
- Install hand rails where needed [required]?
- Cover holes in work area.
- Always wear the appropriate personal protective equipment for the job being performed.
- Wear safety vest when working in and around traffic.
- Be aware of heavy equipment and notify the qualified person of any non-functioning back-up alarms.
- Never work within 10 feet of overhead electric lines.

Seem simple? They should, but daily employees violate these simple rules and jeopardize their safety and others.

Your employer is an equal opportunity employer and as such welcomes applications from qualified female and minority applicants.

The Construction Law Briefing Paper Union Pension Funds: Signatory Contractors Liable for Under-Funding

by Dean B. Thomson and Ryan G. Miner
FABYANSKE, WESTRA, HART & THOMSON, P.A.
e-mail: info@fwhtlaw.com

INTRODUCTION

Many multi-employer defined-benefit pension plans in the construction industry are under-funded, which should be a cause for concern by signatory contractors, union officials and tradesmen alike. Banking and surety executives are also concerned about the unfunded liability issues involving their clients. Contractors who contribute to these funds will ultimately be liable if the plans are unable to meet their obligations. This Briefing Paper summarizes the causes for plan under-funding, union contractors' liability for under-funded plans, strategies for dealing with these issues and what improvements the Pension Protection Act of 2006 may provide.

Recent news articles have focused on shortfalls in single employer plans. For example, IBM discontinued its defined benefit plan, Northwest Airlines requested \$3.7 billion from Congress to remedy the under-funding of its plan and United Airlines saddled the taxpayer's federal Pension Benefit Guaranty Corp (PBGC) with \$6.6 billion in liability. Bradley D. Belt, executive director of the PBGC, testified before the U.S. Senate Committee on Budget in 2005, that "single employer pension plans [are] under-funded by more than \$450 billion..."

Unlike these single employer plans that have the PBGC to rescue them, most construction trade plans are multi-employer plans. Single employer plans are distinctly different from multi-employer plans regarding liabilities. Multi-employer plans are

funded by the contractors who are signatories to the collective bargaining agreements and managed by a board of trustees comprised of union officials and contractor representatives. The PBGC only guarantees the multi-employer plan after the obligations of the employers have been exhausted and then only to a limited extent.

A PBGC report quoted in the May 26, 2006 Wall Street Journal reads, "big problems in many multi-employer plans have been largely overlooked...multi-employer retirement plans [were] under-funded by \$150 billion in 2004, a 50% jump in the deficit from the year before..." For example, the United Association of Plumbers and Pipe-fitter's (UA) investments in projects such as the Diplomat Hotel recently suffered a \$1.2 billion loss, which led to prosecutions by the Department of Labor and plan amendments to significantly cut member benefits. While other trades' plans have not been plagued by such well publicized misfortune, the June 28, 2005 Dow Jones International News reported that, "most workers covered by multiemployer pension plans, common in unionized construction firms, are in under-funded pensions..."

CAUSES OF UNDER-FUNDING

Generally, plan funding requirements are determined by actuaries who examine the plan's assets and the beneficiaries' demographics, estimate the rate at which the promised benefits will be paid out, estimate a rate of return on investment and develop funding criteria to fulfill the plan's obligations. Multiple factors, however, have been working against actuarial assumptions.

The first such factor is the decreasing percentage of unionized labor in construction. Unionized labor comprised 50% of construction craft-workers in 1965 and 30.9% in 1980. In 2005, unionized labor comprised only 14.7% of construction craft-workers, according to the Bureau of Labor Statistics. Some formulas include assumptions of growth in the unionized workforce base upon local organizing efforts. Thus far, local efforts have yet to produce sufficient numbers of new members to overcome the national trend. Thus, any assumed growth in funding based on increased market share of labor has not transpired.

The second factor involves the assumed rate of return on investment (ROI). An estimated ROI is plugged into the actuarial formulas to predict investment income. The higher the estimated ROI used, the lower the contributions required to meet the funding estimates. In retrospect, the ROI of several funds was over-estimated. Many funds have not met these aggressive goals in the post-9/11 stock market, which has contributed to the under-funding of the plans.

Assumptions related to demographics add to the difficulty. The baby-boom generation comprises two-thirds of the workforce while the following generations only comprise one-third. Therefore, as the baby-boomers retire and draw benefits, roughly two out of every three plan participants will be drawing on the funds, while only one out of three will be contributing. Some argue that a new workforce will be present to take the place of the retiring baby-boomers. But to attract a replacement workforce unionized construction must compete with other industries for a greater percentage of either the X and Y generations or the immigrating labor pool. In addition to the declining number of working plan members, increasing life expectancy has extended the duration and amount of benefits that retirees withdraw.

The PBGC and AGC (Associated General Contractors of America) have also testified that past flaws in the funding rules, such as the maximum limit on tax deductions for surplus funding, have deterred the development of fund savings in favorable market conditions.

Setting aside issues of management, even the slightest shortfall in these actuarial



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assumptions, some of which were made many years ago, can have significant impact on today's funding. As PBGC Director Belt testified, "Future losses in the system will depend on numerous variables which are inherently uncertain, e.g., ups and downs in the business cycle, changes in the law, volatility of raw material prices, changes in equity prices and changes in interest rates."

CONTRACTOR LIABILITY FOR UNDER-FUNDING

The Employee Retirement Income Security Act of 1974 (ERISA) made the contractors who are signatories to collective bargaining agreements liable for the obligations of the defined benefit plans to which they contribute. 29 U.S.C. §§1001 to 1461. Trustees of the plans also have personal liability. It did so by establishing funding and reporting standards for defined benefit plans and imposed a penalty for non-compliance in the form of an excise tax. If a plan falls below the minimum funding standard, as many of the plans are currently in danger of doing, then the plan enters reorganization. If plan amendments are not made during the following year that bring the plan up to the minimum funding standards through additional contributions, then the contractors could be assessed a non-deductible excise tax by the IRS in the amount of 5% of the accumulated funding deficiency. An additional excise tax equal to 100% of the accumulated funding deficiency will be imposed if the funding deficiency is not corrected within the tax period. 26 U.S.C. §4971. Contrary to any conventional remedy, the excise tax is paid to the federal government and not applied to cure the shortfall in the plan! Thus, even if liable contractors were assessed an excise tax, the under-funded plan would remain under-funded until separate corrective action was taken. Moreover, the contractors cannot simply increase their contribution to avoid the excise tax. In most cases, plans that are seriously under-funded cannot be cured by increased contributions alone.

For an under-funded plan to once again achieve statutory minimum funding standards, there must be an amendment made to the plan's formula which is approved by the plan's trustees and the PBGC. 29 USC §1400, 29 C.F.R. §4220. (2005). Several unions are currently working to ratify such amendments that would maintain or increase funding requirements but may compromise the accrual of benefits. These proposed amendments may restore the level of funding required to fulfill their current obligations, but may not achieve 100% funding for all future obligations.

CONTRACTOR WITHDRAWAL LIABILITY

After ERISA was enacted, some contractors, through the natural course of business, discontinued operation or switched to open-shop labor. This shifted liability for any then current under-funding to the other contractors still contributing to the plan. This escape route created a financial incentive for the currently contributing contractors to exit the plan to avoid liability for an under-funded plan. Congress responded to this with the Multi-Employer Pension Plan Amendments Act of 1980 (MPPAA). MPPAA created "withdrawal liability" which, in simplified form, imposes on the withdrawing contractor its pro rata share of a plan's under-funding, based upon the amount previously contributed to the plan by the contractor, at the time of the contractor's withdrawal. 29 U.S.C. §1381.

Contractors that discontinue operations, change to open-shop labor, or

Continues on pg. 69

Problem Solver

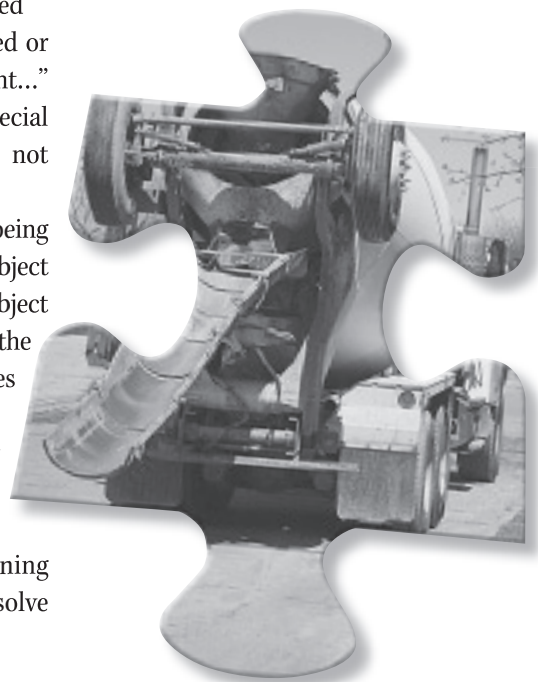
Registration and Proof of Insurance on Construction Equipment

MITA staff have been contacted on more than one occasion by members who have either received a warning or a citation for failure to have a Registration/License Plate and Proof of (No Fault) Insurance on mobile construction equipment such as back hoes and front end loaders. The situation typically involves a loader or backhoe running on a roadway in connection with an ongoing construction project. A police officer stops the loader and asks the operator for his registration and proof of insurance and says you were pulled over for no license plate. The Operator, "You're kidding me, right?" The Officer, "Nope. Here's your misdemeanor citation and appearance date. Have a nice day."

The story does have a good ending. Under the Michigan Motor Vehicle Code (MMVC), "self propelled" construction equipment does meet the definition of a "motor vehicle," and that is sometimes taken by enforcement officers to mean that all rules applicable to motor vehicles, such as registration and proof of insurance requirements, apply to construction equipment being operated on a roadway. However, that is not the case. When certain criteria are met, construction equipment also qualifies as Special Mobile Equipment which is exempt from the title and registration requirements of the MMVC. Special Mobile Equipment is any vehicle "...not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including ...road construction or maintenance equipment..." In that context, the MMVC provides that the Secretary of State "...may issue a special registration ...to identify the equipment ..." but, such Special registration is not required under the MMVC.

Consequently, construction equipment, like a backhoe or loader, which is being incidentally moved on a roadway in connection with a construction project is not subject to the title and registration requirement of the MMVC. Since the equipment is not subject to the registration requirements of the MMVC, the equipment is also exempt from the insurance requirements of the Michigan No Fault Insurance Act, which only applies to "...a motor vehicle required to be registered in this state..."

This issue has been litigated for a MITA member in the Oakland County Circuit Court and the exemption for Special Mobile Equipment operated on the roadway only incidentally to a construction project was confirmed by the Court. Since that time, the Court's written opinion has been a valuable tool in explaining the exemption to enforcement officers and prosecuting attorneys to quickly resolve this type of citation for MITA members.



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MITA Press Conference Focuses Attention on Infrastructure Funding



Mike Nystrom, MITA's Vice President of Government and Public Relations, was among the speakers at a press conference October 17 at the Capitol. MITA organized the event to focus attention on job losses related to a drop in infrastructure funding.

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Orange road construction barrels lined sidewalks leading to the Capitol on October 17, and a large backhoe-loader overshadowed a VW Beetle to remind lawmakers that Michigan is losing 12,255 jobs due to a drop in state transportation funding. The VW Beetle symbolized the 3,010 automotive, banking and pharmaceutical job losses that have made headline news this year. Changeable message signs in front of the Capitol announced: "Job Losses Ahead."

Thanks to the cooperation of several MITA members, MITA's October 17 press conference at the state Capitol was a great success.

Michigan CAT donated the backhoe-loader; **Spartan Barricading** donated the banner posts; **Give 'Em a Brake Safety** donated the construction barrels and changeable message signs; and MITA staff and other industry representatives provided the public speaking. Jeff Williams at Williams Auto-world in Lansing donated a VW Beetle.

In addition to MITA's Mike Nystrom, other speakers included MITA Board Member Mark Johnston, president of Ajax Paving



Industries, Inc.; John Niemela, director of the County Road Association of Michigan; Rich Studley, president of the Michigan Chamber of Commerce; and Dennis Gillow, infrastructure director of the International Union of Operating Engineers Local 324.

The press conference's message, which received widespread, statewide media coverage was simple: "Caution: Job Loss Ahead." This means that if the Legislature does not do something to increase infrastructure funding, the state will continue to see job losses totaling over 12,000 in construction and other related fields.

It is hoped that the press conference and media coverage it generated will help keep the pressure on legislators to do what needs to be done to improve Michigan's transportation funding.



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Member News

MITA Members: Notice Regarding Use of MITA Logo

We strongly encourage the display of the MITA logo on your stationery, publications, etc. It is our hope that this would indicate that you are as proud to be a member as we are to have you as part of the MITA organization.

At the same time, we would also like to caution you about using the MITA logo in a fashion that would imply our support and/or endorsement of programs for our members, the content of which we have no knowledge, nor have we been contacted in terms of an endorsement. We have witnessed two incidents that duplicate MITA member services and in which we were not contacted prior to distribution to selected MITA members.

Again, while the Board of Directors encourages you to positively express your MITA affiliation, they also respectfully request that you contact MITA staff concerning possible program endorsements.

Thank you in advance for your cooperation.

Help Support Epilepsy Foundation of Michigan

MITA Executive Vice President Bob Patzer, last year's king of the Epilepsy Foundation of Michigan's Mardi Gras Gala, will crown the new king next February. The crowning will take place at the foundation's 3rd Annual Mardi Gras, scheduled for 6:30 p.m., Tuesday, February 5, 2008, at The Royal Park Hotel in Rochester. The evening will include New Orleans inspired cuisine, cocktails and live entertainment.

Long time MITA member, Colette M. Russell, secretary/treasurer of Pamar Enterprises, Inc., has recently been elected to the Board of Directors of the Epilepsy Foundation. Bob Patzer could not be more pleased that Colette has accepted this position and will continue on with his initial efforts at raising funds for this fine organization.

For more information on attending this event, please contact Brianna Romines at the Epilepsy Foundation of Michigan by calling 248-351-7979, ext. 1-217 or e-mailing events@epilepsymichigan.org. You can also access details by visiting the foundation's website: www.epilepsymichigan.org.



Continues on pg. 39

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Member News

Continued from pg. 36

Fishbeck, Thompson, Carr & Huber, Inc. (FTC&H)

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Serving clients for over 50 years, FTC&H is a full-service civil engineering, environmental, architectural/engineering and construction management firm with over 330 employees. With offices in Grand Rapids, Lansing, Kalamazoo and Farmington Hills, Michigan; and Cincinnati, Ohio, FTC&H is one of the Top 500 design firms in the United States as ranked in Engineering News-Record.

NEW HIRES

Shannon L. Filarecki, P.E., Farmington Hills office



Shannon L. Filarecki, P.E.

Filarecki joins FTC&H as a senior engineer in the firm's civil engineering division. She has more than 13 years of experience managing multiple design and construction engineering projects of varying scopes for a variety of clients. Filarecki's project involvement includes commercial, industrial and residential developments; water treatment plants; water mains; sanitary sewers and lift stations and elevated water towers.

She achieved a bachelor's of science degree in civil engineering from Lawrence Technological University and is a registered professional engineer in Michigan. She has also served on the Information Technology Committee and the Website Design Task Force for the American Council of Engineering Companies (ACEC)/Michigan.

Cynthia C. Irving, Grand Rapids office



Cynthia C. Irving

Irving joins FTC&H as a staff engineer in the firm's Process Engineering Division. She has more than 14 years of experience serving industrial clients on projects such as wastewater treatment systems, water distribution systems, landfills, environmental site assessments, underground storage tank closures and compliance monitoring. Irving achieved a master's of science degree in civil engineering and bachelor's of science degree in environmental engineering from Michigan Technological University.

Continues on pg. 44

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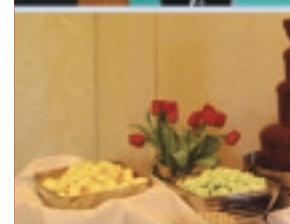
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milestone is before us. This year you get to enjoy two great events at one great location. The 4th Annual Conference and 2008 Presidential Black-Tie Event will be held at the Soaring Eagle Casino and Resort in Mt. Pleasant, MI January 16-18, 2008.

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*Honoring MITA President,
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ING EVENTS

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2008

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Ski Weekend	Annual Conference & Presidential Black Tie Event	Metro Super Conference	Grand Rapids Super Conference	Saginaw Super Conference	Lansing Super Conference	ConExpo Industry Party
January 3-6 Boyne Highlands, Harbor Springs	January 16-18 Soaring Eagle Casino & Resort, Mt. Pleasant	January 25 Sterling Inn, Sterling Heights	February 1 Crowne Plaza, Grand Rapids	February 22 Horizons Conference Center, Saginaw	February 29 Holiday Inn South, Lansing	March 13 Planet Hollywood, Las Vegas

Support Your Association

Be a sponsor or an exhibitor or both!

In an effort to make your membership work for you, MITA has decided to offer members a chance to "one stop shop" for upcoming sponsorships and exhibit opportunities. Below you will see each event listed with it's respective opportunity to sponsor or exhibit. You can participate in one or all of the events listed. Should you decide to participate in each event listed above **your bill will be reduced by 10%**. Please keep in mind that when your company sponsors or exhibits at an event you're supporting your association while advertising your business. It's a win-win situation!

Please indicate your participation by checking the box next to the opportunity available. Then fill out the form below. No need to send a check, your company will be invoiced. Please remember that if you participate in each event you can reduce your bill by 10%!

What does your sponsorship bring you?

Depending on the level of participation and which event; a MITA sponsorship usually includes prominent signage at the event, follow-up exposure through Cross-Section, and pre and post event advertising. Most importantly hundreds of purchasers see your company supporting an organization that supports them. Please call Rob Coppersmith with questions and details.

2008 Ski Weekend	Annual Conference & Presidential Black Tie Event	Annual Conference Exhibit Opportunities	Super Conference Exhibit Opportunities	ConExpo Industry Party
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culture. They want to form relationships and trust those they are dealing with. Much of our time is spent meeting officials in the government and churches getting to know them and developing relationships.

Q: What were living conditions like?

A: Each time I have gone has been a unique experience. I have slept in remote villages in a tent, homes of pastors, and the Grand Hotel in Kinshasa DRC (the capital city). By the way, it is not so grand.

When I return home I am always amazed when water comes out of the shower head. I know it is time to go back when I lose patience when it doesn't get hot instantly. In Africa you are just glad if you have a gallon bucket of cold water to call your shower.

I have found that, however primitive the conditions, people are very concerned for your comfort.

Q: How was the food?

A: The food is generally pretty good. After time you learn what to stay away from and what you like. The fresh fruits like bananas and mangos are nothing like you have ever had in the U.S. One of the strangest things that I was served was goat pizza. You don't find that on the menu in Michigan.

The typical meal is usually white rice, French bread, a whole fish fried in palm oil and fresh fruit. There is a French influence on the cooking from being former French & Belgian colonies.

It is wise to have some bottled water near by. Occasionally, you will find a warm glass bottle of Coke or orange Fanta.

Q: Where have you been in Africa?

A: Most of my travel has been in Democratic Republic of Congo (Former Zaire), The Republic of Congo, and Rwanda.

Q: How safe are you when you travel?

A: My friend at Congo International Ministries is a political refugee from Congo and has lived in Michigan for the last 13 years. He is

very well connected with the new government. We often travel with a bodyguard furnished by the government. There have been a few times that the situation was getting uncomfortable, but nothing developed. For the most part people either welcome or are at least accepting of Americans.

Q: What interesting people have you met?

A: I have met a huge number of kids, but the ones that are the most fun to meet are the ones who have never had live contact with a Caucasian. In remote villages some run to look from a distance and the braver ones will want to shake your hand or touch your arm. It is a strange feeling to be such a novelty. A huge crowd of kids will gather if you show them their picture on a digital camera screen.

We have met many people dedicated to helping others. We have been to orphanages, churches, and AIDS hospitals where people work selflessly for other people. It is an eye opener to see people that have nothing, but they are helping others.

Q: How does your family get involved?

A: My five kids are always gathering things up for me to bring with me to bring on trips. They are always putting things away that they say the kids in the Congo would like. I have brought soccer balls, crayons/paper and mini Frisbees in the past.

My wife, Lisa, is former trauma ICU nurse and she has been consulting with the doctor of a medical clinic being built in Congo. It has been a year long process locating the necessary medical equipment and raising funds. It is further complicated because the doctor and my wife are communicating in French via e-mail. Eventually, supplies have come from the U.S., Rwanda and Uganda. The clinic will have many modern features like an ultrasound machine. The facility is scheduled to open in October.

Q: What does the future hold?

A: Our latest project is building a pastor training center on the same property as the medical clinic. It will hopefully be opening next spring. My wife and I are tentatively planning a trip next summer to the clinic and training center.

Q: What have you learned from your travels?

A: It becomes apparent very quickly how overly blessed we are in America. Two thirds of the world's population survives on less than two dollars per day! After you see some of the poverty and living conditions, you develop a heart for these people. It's rewarding to try to bring them hope. I have seen the impact of what audio Bibles and a \$300 generator can have on a village.

Elementary school children in Brazzaville Congo.





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Member News

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Payne & Dolan

www.payneanddolan.com



Payne & Dolan Gladstone, Mich. shop employees were recently recognized for 10 years of accident free work. Pictured from left to right: Andy Broeders, Bob Kallman (top row); Al Megenuph, Dan Minten, Greg Larson and Rob Welch (front row). Payne & Dolan, Inc., a professional construction services company, has served the needs of its clients and customers for over 70 years. Headquartered in Waukesha, Wis., Payne and Dolan is a leader in producing and providing asphalt pavement services and products. It is dedicated to quality, safety and leadership in a competitive industry. In addition to the Gladstone shop, the company has a Michigan office in Gaylord.

Continues on pg. 46

Advertisers Wanted for MITA Directory

Beat the holiday rush! Sign up early to advertise in the MITA 2008 Membership Directory and Buyer's Guide.

The deadline for your insertion order and ad is December 14, 2007. If you have questions, please e-mail nancybrown@mi-ita.com or call her at 517-347-8336.

We hope you take this opportunity to be included in next year's directory, which will be mailed to MITA members only and, as always, is an excellent way to advertise your business all year long.



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Member News

Continued from pg. 44

Spalding DeDecker Associates (SDA)

www.spaldingdedecker.com

Established in 1954, Spalding DeDecker Associates, Inc. is an engineering consulting firm specializing in infrastructure, land development and surveying. With offices in Detroit, Rochester Hills and Brighton, Michigan, and field offices in Trenton and Farmington Hills, Mich. SDA is an employee-owned and ISO certified organization that provides design and engineering solutions for municipal, land development, transportation and water/wastewater projects. The firm also offers complete construction engineering and land surveying and mapping services.

SCADA SERVICES

Spalding DeDecker Associates, Inc. (SDA), a regional civil engineering and surveying firm, recently added Supervisory Control and Data Acquisition (SCADA) services.

SCADA and Control System service, combined with the existing engineering services, adds a new technology-based service, which bridges the gap between the conceptual system design and actual implementation of SCADA solutions. Led by Andrew Keller, SDA will offer evaluation, design and implementation of SCADA and Control Systems for several markets including manufacturing, automotive and municipal infrastructure. SCADA is predominantly used in facilities such as water and wastewater facilities to monitor items critical to successful operations.

"SCADA represents an innovative technology that SDA believes will help our existing clients manage their facilities better and more efficiently," said David A. Lakin, P.E., president of SDA. "SDA is continually striving to stay ahead of the new technologies in our ever-changing world."

NEW HIRES

Andrew L. Keller

Andrew Keller will manage their Supervisory Control and Data Acquisition (SCADA) operations.

Keller comes to SDA with over 22 years of experience in management and control systems design. His hiring is significant in that he brings many years of SCADA experience which SDA will now use to launch new services in the SCADA industry. SCADA is predominately used in facilities such as water and wastewater facilities or building facilities to monitor items critical to successful operations.

"Keller has a proven background in SCADA and will help SDA provide value-added services to SDA clients," said David A. Lakin, P.E., president of SDA.

Philip N. Loud, P.E.

Philip N. Loud, P.E. will manage their Brighton branch office.

Loud comes to SDA with 31 years of experience in the

civil engineering industry including water/wastewater design, storm water management, road design, GIS, survey and energy management. He will be responsible for managing and expanding SDA's new Brighton branch office where the focus will be serving transportation, municipal and private clients in that region. Loud graduated from Cornell University with a bachelor of science degree in civil engineering and continued his graduate studies in water resources at the University of Michigan. Loud is currently licensed as a professional engineer in Michigan and Ohio.

"We are very excited to have Phil Loud lead our Brighton office," said Lakin. "He has the leadership and experience that matches SDA's corporate vision for this area while coming from a complementary corporate culture."

Ted Meadows

Ted Meadows will serve as a construction contract administrator.

Meadows comes to SDA with nine years of experience in the construction engineering industry. He will be responsible for providing construction contract administration services and construction inspection supervision services to a variety of SDA's clients. He graduated from the University of Kansas with a bachelor's degree in environmental science. His certifications include: MDOT Certified Density Technician, MDOT Certified Aggregate Technician, MDOT Concrete Paving Inspector, Concrete Technician & Concrete Construction Inspector, Concrete Field Testing Technician, MDEQ SESC and USDOT HAZMAT certification.

"We are very excited to have Ted join our construction engineering team," said David L. Potter, P.E., vice president and treasurer of SDA. "He brings a solid reputation in the field as an experienced construction technician and contract administrator. He is well-liked and respected because of his great attitude and knowledge of the construction industry. Ted knows how to get things done right the first time"

Sermed Saif, P.E.

Sermed Saif, P.E., has been appointed to associate.

Being an Associate of SDA is a special recognition. Members of SDA's professional staff may advance to Associate upon evidence of professional growth and development and the bearing of increasing responsibilities. Advancement to Associate is a management decision based on the recommendation of an SDA officer to the board of directors.

Saif graduated with a bachelor of science degree in civil engineering from New York's Polytechnic University in 1997. Joining SDA in 1997 as an engineer in training, he has served in many capacities and is currently a project engineer servicing SDA's Macomb County municipal clients, Macomb and Lenox Townships. He earned his professional

Engineering license in 2004 and is a member of the American Society of Civil Engineers, treasurer of South Oakland County Municipal Engineers, and president of Arab American Engineers and Architects Association.

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NEW HIRE

Jason Macdonald, Taylor office



Jason Macdonald

Macdonald will provide community planning and environmental design services to municipal and private sector clients.

With over 10 years of experience working for land planning and landscape architecture firms, Macdonald's expertise includes residential and retail master planning, streetscape improvements, urban revitalization, parks and recreation master planning and landscape design. He received his bachelor of science degree in landscape architecture from Michigan State University. Macdonald resides in Ferndale.

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Michigan Road Preservation Association



Jim Murner

The Michigan Road Preservation Association (MRPA) is the statewide organization of the preventive maintenance contractors and suppliers. Founded in 1998, MRPA promotes preventive maintenance concepts and products, defines and develops quality specifications, and educates users on the quality, safety features and effective uses of preventive maintenance practices. MRPA works to ensure that preventive maintenance concepts and funding are continuous and is recognized as the voice of the preventive maintenance industry in the State of Michigan. The mission of the Association is to represent qualified contractors and suppliers who are dedicated to pavement preservation for quality roads and highways by partnering with Michigan transportation agencies.

The 2007-2008 President of the Association is Jeff Harless, vice president of contractor member Strawser, Inc. The other contractor members on the Board of Directors are Jerry Fahrner, secretary/treasurer of Fahrner Asphalt Sealers, L.L.C.; Peter Scodeller, Scodeller Construction Company; and Randy Terry of Terry Asphalt Materials, Inc.

The Association is managed by Murner Marketing and Management, Inc., and the office is located in Okemos. Jim Murner serves as part-time executive vice president and Roxanne Murner is the executive assistant. Prior to founding his firm in 1993, Jim Murner was President of the Michigan Concrete Association for 17 years. Murner also has experience working as a civil engineer for contractors, material suppliers and the Michigan Department of Transportation (MDOT).

Over the last eight years MRPA has developed a strong partnering relationship with MDOT and the other road construction associations. MRPA's activities with MDOT include quarterly joint

committee meetings, annual training seminars with the Regions and TSC's, development of quality specifications and introduction of new preventive maintenance products and processes. MRPA is also active in the new Construction Quality Partnership program for training and certification of personnel and certification of contractor and consultant companies. An MRPA goal for 2007 is to expand its activities to the local transportation agencies. In October MRPA jointly sponsored a Preventive Maintenance "Best Practices" seminar for county engineers and their staff with the County Road Association of Michigan.

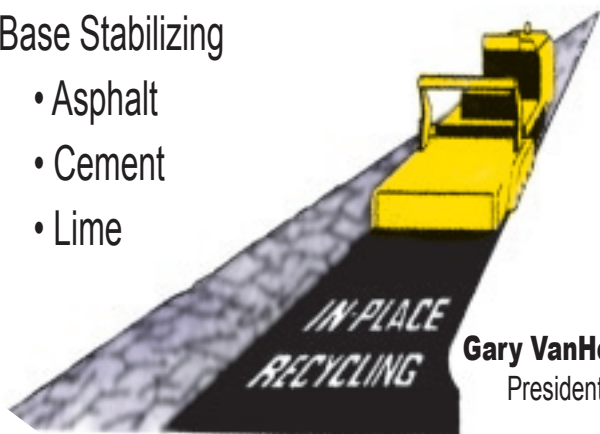
For more information about MRPA, contact Jim Murner, executive vice president: Phone: 517-347-6833; E-mail: jim@murner.biz; Website: www.m-rpa-org; Address: P.O. Box 1158, Okemos, Mich., 48805.

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It is sad to know there is nothing we can do but to watch helplessly as our governor and Legislature continue to flounder in Lansing. The governor protects her special interest groups and the rest of our elected officials worry about getting re-elected. Meanwhile businesses and working people alike wonder why we stay here, where will our next job or pay check come from. Work and jobs are in short supply and all they can think of is to tax us more. Tax us on what? Wages and revenues are down, we are making sacrifices. Are they? They continue to threaten to cut the services we need most. Great plan, governor. What's next? A legislative pay increase because of the "extra" time spent on not accomplishing anything. Maybe their pay should be based on performance like so many of us. That may be a way to balance the budget.

Judy Brosky, ChFC, CLU

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I think that each elected official needs to reevaluate what is important to their constituents in the long term and put aside party politics in favor of sound policy. Naïve as it may be, they need to explain to their constituents that they voted the way they did on an issue because it was the right thing to do. They may not be reelected because the partisan political machines will kick into gear and the next person who does this may not be reelected, but there has to be leadership willing to risk this and lead the lemmings, who only represent partisan politics, off a cliff. How can they sleep at night?

Jim Kloote

J.E. Kloote Contracting

It is my opinion that the Legislature simply is not doing their job at all. The amount of actual time on the job is not sufficient to address the many challenges that face our state even if they were motivated to solve problems as opposed to debating them.

From my perspective many of our legislators are actors in a "Dog and Pony Show" where no one is entertained and nothing is accomplished. Our legislators need to be motivated by service to their citizens and notoriety for achieving goals that serve the greater good. Naive as it sounds, I believe that service in the Legislature should draw concerned citizens who are willing to take time out of their normal lives because of a gift that they possess and a burning desire to give of their extraordinary talents. I believe that they should be very highly compensated for this service but only while they serve. Many of the individuals currently "active" in the Legislature are career politicians (as long as they can remain popular) who crave the recognition of BEING rather than DOING.

Malek Eljizi

Stress-Con Industries, Inc.

From looking outside in, I believe they are doing a fair job overall, but much improvement must take place to balance our current budget crisis. I would rate them a 6 minus, 10 being good.

Continues on pg. 62



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Did You Know?

MITA Has a Utility Locating Contract for Members

It's true. Years ago MITA formed the Michigan Damage Prevention Board (MDPB) with all the major utility owners in Michigan. MITA Executive Vice President Bob Patzer and Vice President of Membership Services Rob Coppersmith meet monthly with the MDPB to discuss and develop ideas for creating a safer working environment for construction workers while improving locating at the same time. The MDPB developed a contract outside of Public Act 53, the act that governs utility locating in Michigan, in an effort to develop best practices for the industry. The issues and contract outcomes are shown on the adjacent chart.

ISSUE	PUBLIC ACT 53	CONTRACT
Advance notice to MISS DIG System. (Normal Notice)	Three full working days, but not more than 21 calendar days, excluding Saturdays, Sundays and Holidays.	72 hours, but not more than 14 calendar days, excluding Saturdays, Sundays and Holidays.
Commencement of construction.	Act is silent on this issue.	Excavator must commence excavation within 14 days of the dig start date or ticket is null and void.
Locating or marking of normal notice.	Locating to be done not less than one working day in advance of construction.	A utility owner shall mark its facilities by the dig start date on the normal notice.
"All Clear" positive response.	Act is silent on this issue.	A utility owner having no facilities in the area of construction shall make this information available through an automated response system administered by MISS DIG System.
How close to a marked facility can you get with powered equipment prior to exposing the facility.	Act is silent on this issue, but requires that you determine the precise location of facilities prior to excavating with power equipment.	Excavation with powered equipment may take place to within 60 inches of the flag, paint or other marks. Hand expose facility, then proceed with powered equipment. (Caution Zone)
Exposing lines — Parallel construction.	Requires that excavator determine the precise location in advance of excavating.	For excavations within the Caution Zone soft excavation test holes shall be dug as often as is "reasonably necessary."
Failure to mark a facility — response.	Act is silent on this issue.	Upon notification to the MISS DIG System facility, owner has 3 hours to respond.
Additional assistance response time.	If unable to determine precise location, excavator to notify the public utility who has one working day to respond.	During normal working hours 7:00 a. m. to 5:00 p. m., Monday to Friday, utility owner shall respond in 3 hours after notice to MISS DIG.
Ability to recover costs.	Excavator can recover costs for physical damage only, should a utility fail to comply with the Act.	Upon documentation that any party fails to comply with this contract, that party will be held liable for resulting damages, costs and expenses to the insured party.
How long is a ticket deemed valid.	Silent — However the MISS DIG system arbitrarily placed a 21 day expiration.	Good for 21 days unless job is to be won't be completed, in which case ticket is valid for 180 days.

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The only way to take advantage of protections afforded in the contract is to be signatory to it. To do so is simple: just contact Rob Coppersmith at roboppersmith@mi-ita.com. Many members have been more than eager to sign after a major damage has occurred. Don't make this mistake. The protections in the contract are not retroactive. Please call Bob Patzer or Rob Coppersmith at MITA (517-347-8336) with any questions you may have about the MDPB or the Best Practices Contract.

Intelligent Transportation Systems: Michigan Playing Vital Role

*Article Submitted By Greg Krueger, P.E.
Statewide ITS Program Manager
Michigan Department of Transportation*

As early adopters of Intelligent Transportation Systems (ITS) and Vehicle Infrastructure Integration (VII) programs, the Michigan Department of Transportation (MDOT) and the state of Michigan are playing a national and international role in the research of the design, planning and deployment of these systems.

VII is a segment of ITS focused on enabling vehicles and the road to communicate with each other through wireless connections. ITS involves surveillance, traffic control, lane management, parking management, information dissemination and enforcement. It encompasses a variety of on-board vehicle safety applications and transportation operations.

At its most basic level, VII involves two major components: roadside equipment and on-board equipment in specially designed "smart cars." Roadside units, similar in size and operations to home wireless network routers, gather information from sensors in the road and relay it to specially equipped intelligent vehicles. The on-board units in intelligent vehicles communicate and receive data, and use information received from the roadside, as well as other intelligent vehicles, to alert drivers. On-board equipment transmits data directly to other smart cars and to roadside equipment. Excited by the benefits of this constant exchange of information between vehicles and the infrastructure, many road-related institutions and agencies have become involved in VII. They include educational institutions, communications carriers, auto manufacturers, and transportation agencies.

State DOTs, namely, California, and Michigan; automakers Chrysler, General Motors, Toyota, Ford, and Nissan; and the US DOT have formed the National VII Coalition. The Coalition is focused on evaluating whether the investments needed to run a VII program are worthwhile, and how to develop the process, if that is the case. This coalition is also important to ensure that standards are developed that span geographic limits and automobile manufacturers. The system must work the same in Michigan as it would in Florida and Nebraska and since only one system will be deployed, it must work the same in every vehicle by every manufacturer, from Ford to General Motors to Kia to Chrysler.

In Michigan, research into the effectiveness and feasibility of the VII system has begun on a test bed built at the junctions of I-696, M-5 and 12 Mile Road. This is the nation's first open-air interstate laboratory for testing VII and ITS equipment.

The MDOT system begins with "smart cars," enabled with global positioning systems (GPS), and includes ultra-high-speed communications technology. The units are designed to share data, such as position, proximity

Collision avoidance systems could be especially beneficial in construction areas where workers and traffic are in close proximity. Safe vehicles can display speed warnings to alert drivers of areas with reduced speed limits due to construction or congestion.

and vehicle condition, with other smart cars. They also communicate with MDOT's roadway sensors and supporting computer systems. In this system, vehicles are not separate entities, but part of a system of vehicles and infrastructure sharing information in an effort to save lives and improve mobility.

Smart cars transmit data to roadside equipment that provides MDOT computers with the information regarding slowdowns, ice patches, rough roads and other hazards. This information is redistributed to smart cars in the area with electronic changeable message signs or alerts broadcast directly into the vehicle. In addition, on-board equipment communicates the position and velocity of a smart car to other equipped vehicles, improving safety and allowing for a new generation of smart lanes with managed speeds and following distance factors. Consider the possibilities of a system that displays warnings, received from real-time information, to enable a driver to react in advance and avoid

Continues on pg. 55



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MDOT's FieldManager Software Saves Michigan Millions Annually

Several MITA members have experienced the project management efficiencies and associated financial benefits of FieldManager's "Read Only" module, many choosing to utilize the innovative software on their private and non-MDOT work. MITA is currently engaged in discussions with Info Tech to explore the expansion and further development of the "Read-Only" software into a FieldManager "Contractors Version" that would focus on the business and construction management operations of the contractor. To learn more about those efforts or become active in FieldManager – Contractors Users Group, contact Glenn Bukoski, P.E., at the MITA office (glennbukoski@mi-ita.com or call 517-347-8336).

MDOT's FieldManager suite of software that manages, processes and tracks Michigan's road, bridge and airport construction programs, is estimated to save the state \$28.5 million annually in reduced hands-on time, according to a recent survey.

The development of FieldManager for managing infrastructure projects has streamlined construction management operations and transformed the industry.

MDOT launched the software in 1999 with the help of Info Tech, Inc., a Gainesville, Fla., software company. The software enabled the department to eliminate a time-consuming, manual process for managing construction. Today, the software is used by 3,000 employees at MDOT facilities, local government agencies, engineering consultant firms and construction contractor firms in Michigan. Recognized as a nationwide leader in construction management, FieldManager also is used by the Iowa, Wisconsin and Maine departments of transportation.

"FieldManager handles our \$1.5 billion annual construction program," said State Transportation Director Kirk T. Steudle. "It is consistent with the department's goal of putting more of our state transportation dollars into preserving our roads and less into administrative overhead."

Tom Rothrock, senior vice president of Info Tech, Inc., said that throughout the development of FieldManager MDOT was a pleasure to work with, "and together we have created a product that is a useful and successful tool for many agencies."

In addition to the savings generated by the program, another important aspect is that the state of Michigan has received \$631,000 to date in royalties from the licensing of the software by Info Tech. The software surpassed \$1 million in annual sales for the first time in 2006.

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MDOT Approves OCP Requirement Option

Article Submitted by Tom Horton, Centurion Insurance Agency

For years the road building industry has provided MDOT with a job specific policy: the Owners & Contractors Protective (OCP). The cost of the OCP was put into each bid, costing the state an estimated \$3 million to \$5 million per year for policies that were not used when accidents occurred. Instead MDOT held the contractors responsible and went to the contractors' primary insurance companies for relief. We all agree that the \$3 million to \$5 million in savings would be better spent building road and bridge projects.

This OCP cost has been an issue for many years within the industry. Centurion Insurance Agency and MITA worked together on a proposal that could provide the desired coverage in lieu of the OCP. This idea was presented to MDOT. Centurion Insurance Agency and MITA proved that their idea was not only cost effective, but that it would provide MDOT with broader coverage at no additional cost. As part of the research on the proposal to MDOT, Centurion Insurance Agency reviewed our list of MDOT prequalified contractors and found that each of these clients already had the coverage needed for the alternative insurance approach.

When MITA and Centurion Insurance Agency met with MDOT, the Department of Management and Budget, the Attorney General, and MDOT's Contract Service personnel, we proved that there was a better way of providing insurance coverage. We showed them that the OCP was limited in comparison to the general liability policy. In fact, we could only find one incident in history when the OCP policy was actually used to cover an accident. Then the icing on the cake was we demonstrated

What Does this Mean to you?

Project: #071002 (October 5, 2005)
 Engineer's estimate: \$6,462,919
 Cost for OCP (Owners & Contractors Protective): \$ 8,937

In Lieu Of:

Project: #071002
 Engineer's estimate: \$6,462,919
 Cost for OCP (Owners & Contractors Protective): \$ ZERO*
 *Cost when the Contractor provides MDOT with:
 1) Per Project Aggregate Endorsement
 2) Names MDOT and the other Agencies as an additional insured.
 3) Provides a \$2,000,000 Umbrella.

Bottom Line:

You no longer have to include the cost of an OCP in your bid, making your bid more competitive.

how the state would save a significant amount of money.

The state agencies involved and MITA agreed that the OCP can still be used in case a contractor was unable to provide MDOT with the alternative coverage required by the special provision that went into affect with the October 2007 bid letting. This flexibility allows all MDOT contractors to continue using an OCP should they elect to do so. By using the alternative coverage, however, the contractor can lower his bid.

Centurion Insurance Agency and MDOT staff worked together to formulate the guidelines for the required alternative coverage. This is where the rubber met the road. MDOT has required Form 1304A Certificate of Insurance annually from contractors as part of their pre-qualification package. Form 1304A does not require a contractor to name MDOT as an additional insured, so an alternative method

had to be found. The ACCORD Certificate of Liability Insurance is an industry standard document that contractors routinely provide to their customers. As the alternative to an OCP, MDOT will now accept an ACCORD 25 certificate that shows:

- Additional Insured Endorsement using ISO form number CG 2010 or its equivalent.
- Per Project Aggregate using ISO form: CG 2503 or its equivalent.
- An umbrella limit of: \$2,000,000.
- The certificate must list the project number and name of all the parties required by the contract to be additional insured for this specific project.

Continues on pg. 55

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Stormwater Management Publications Available

The MDOT Construction Site Soil Erosion & Pollution Prevention pocket guide and the Stormwater and the Construction Industry wall poster were developed as part of the Department's storm water management education program. The response to these items from

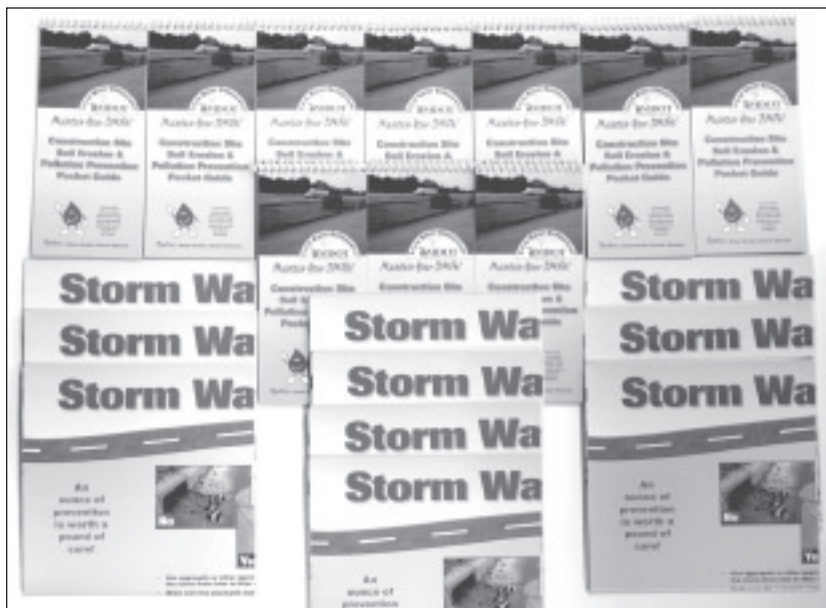
the transportation construction community has been extraordinary; unfortunately, MDOT has not been able to provide free copies to everyone that has requested them.

Now, for a limited time only, the pocket guide and wall poster are available for purchase. They will be sold together in sets of 10 each (see pricing below). Due to the limited supply, a maximum of three sets may be ordered. Orders will be filled while supplies last.

The pocket-sized (4x8½) guide has 18 double-sided, spiral-bound pages printed in full color. It is fully laminated to hold up in the tough construction site environment. Covering the most frequently used sedimentation and erosion control devices, along with tips on construction site pollution prevention, the pocket guide makes the perfect field companion to the MDOT SESC Manual.

The 24x32 inch (8x8 folded), full color wall poster is printed on both sides. The front of the poster includes a photo collage of frequently used construction site best management practices with tips on what to look for when installing, inspecting and maintaining these devices. Additional storm water management tips are included on the reverse side of the poster.

These materials may be viewed and printed as PDF files on the MDOT Storm Water Program website at www.michigan.gov/stormwatermgt – click on "Education".



One set of publications includes 10 posters and 10 pocket guides as shown here.

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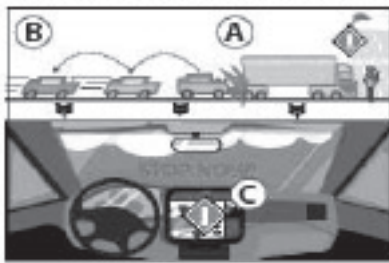
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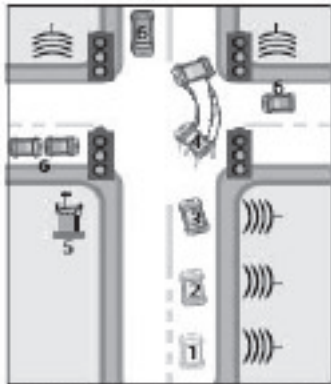
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(maximum order)
\$377.25 + tax, if applicable

How Can VII Reduce Traffic Incidents?



- A. Incident occurs approach.
- B. Incident alert/warning transmitted to vehicle in time to avoid collision.
- C. Vehicle data history system activated.



1. Potential red light violator approaches intersection.
2. Potential red light violator receives in-car warning.
3. Potential violator steps in (stop or if not).
4. Violator crosses into intersection.
5. Possible impact vehicle detects violation.
6. Warning sent from vehicle to other cars.

Intelligent Transportation Systems: Michigan Playing Vital Role

Continued from pg. 51

collisions. For example, a warning message displayed as a driver approaches an intersection, just as another vehicle runs a red light and enters from the opposite direction, could give the driver enough time to stop before a collision occurs.

Collision avoidance systems could be especially beneficial in construction areas where workers and traffic are in close proximity. Safe vehicles can display speed warnings to alert drivers of areas with reduced speed limits due to construction or congestion.

Roadside warnings and signage can also be duplicated on-board to notify drivers to watch for workers. A VII system known as dynamic route guidance has the potential to ease congestion in work zones. Aided by GPS and real-time traffic and construction updates, dynamic route guidance collects data on construction, road hazards, weather and other information that is updated in real time to guide drivers to the most efficient route available.

Smart car research is also extending into "safe vehicles," which are semi-automated and can control the speed of a vehicle. Work zone safety clearly stands to make significant gains through the use of VII, although VII should not be considered a significant factor in road construction and maintenance projects since most equipment is attached to a pole or cabinet located away from the road and is not distracting to drivers.

The findings of VII research conducted in Michigan will extend beyond the state, as the ultimate goal is to deploy a nationwide VII program. Ideas generated in Michigan also will serve to inform VII investors worldwide. And the work being done in Michigan will lay the foundation for the future design and implementation of systems in Michigan and around the globe. As a result, Michigan is poised to play a vital role in the development of the future of all aspects of VII.

MDOT Approves OCP Requirement Option

Continued from pg. 53

•Notice shall be given to the Department in writing, for:

- a) 30 Day Notice: insurer initiated cancellation or reduction in coverage.
- b) 10 Day Notice: non payment cancellation or reduction in coverage for non payment.
- c) Immediate Notice of Contractors for cancellation or reduction in coverage.

MDOT has required specific Insurance Service Office (ISO) forms (Form's CG 2010 and CG 2503). Instead of using these ISO forms, an equivalent form can be provided by the contractor's insurance company. If the contractor does not have an equivalent form, the contractor will be required to provide an OCP for that project. The responsibility for the form(s) equivalent falls to the contractor and the contractor's insurance company. MDOT will not make this determination.

Contractors should take advantage of the alternative to the OCP. The money that can be saved by the state can be put back into new road and bridge construction projects. Just think, if you didn't take the advantage of what MITA and Centurion Insurance Agency have been able to get approved, you would have included the \$8,937 in the above example bid. And that could have spelled the difference between a \$6 million project and zero!

For more information, contact Glenn Bukoski, P.E., MITA's vice president of engineering services at 517-347-8336 or call Tom Horton, Centurion Insurance Agency, at 517-381-5140.

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MITA Political Action Committee

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"All that is necessary for evil to triumph is for all good men to stand by and do nothing."

— Sir Edmund Burke

This quote is as relevant now as it was when Burke coined it some 100 plus years ago. When it comes to the legislative arena your survival and ability to make a profit is tied directly to your aggressiveness in financing the campaigns of those who understand the difficulties associated with Michigan's heavy/highway construction industry. Contrary to what you may think, through the collective power of MITA you can affect the legislative process.

The primary focus of MITA's legislative agenda will be long-term, adequate and stable funding for Michigan's supporting infrastructure. It is essential that we convince our elected officials that public works are an investment in our future, improves the quality of life and provides real and meaningful job programs and tax stream. The "no new tax" platform and attitude of many politicians must be changed and this change will require a calculated not emotional approach to this issue. Before we get to this mode, we must have the ear of those who control state government. It is your PAC dollars, and yours alone, that will allow MITA to open the necessary doors in Lansing in our mission to convince lawmakers as to the importance of funding infrastructure improvements.

We need your commitment and investment in MITA-PAC today! Those of you who are content with "letting the other guy carry your weight" are only cheating yourself and short changing our industry.

Send your personal check or money order now to MITA PAC and remember that democracy is not a spectator sport.

What is MITA PAC?

The MITA POLITICAL ACTION COMMITTEE is the legislative voice of Michigan's heavy construction industry. MITA PAC is the most effective tool our industry has to support candidates who will fight for contractors in the Michigan legislature. Your financial support of the MITA PAC gives all of us who care about the future of heavy construction and free enterprise a strong influence in the political process.

Why Do We Need a PAC and Why Should I Support It?

The infrastructure and transportation construction industry survives on public funding. Without your support, our level of influence to promote adequate public funding is diminished. We must also fight negative public policy. Our industry is also constantly under attack in the Michigan legislature. Not a day goes by that some legislators in the Michigan House and Senate aren't proposing legislation that would boost our workers' compensation costs, negatively impact our labor force, raise taxes on personal property, increase business liability – the list goes on and on. Our ability to provide jobs and protect our bottom line is profoundly affected by the legislative and regulatory process.

If we do not prevail in the legislative and regulatory process, we will cease to exist in our business as we know it. We will not be able to provide jobs. We may not be in business!

We have full-time lobbyists fighting for us in Lansing and communities around Michigan. We have spent a great deal of time educating the men and women who decide our fate in Lansing. However, term limits have made this task even harder and there are still some lawmakers who may not have a grasp of our issues or the impact that their decisions have on our industry and you. But, the law allows us to band together under MITA PAC. Instead of lobbying elected officials who don't know or

don't care about our ability to provide jobs, our PAC allows us the opportunity to find and fund candidates who believe in us and our employees. The MITA PAC is now one of the top PACs in Michigan. But, only 20 percent of our members provide 100 percent of the funds raised to support candidates who will fight for us – all of us. If the 80 percent of our members who don't participate gave just \$200, we would be an even more potent force for the heavy construction industry.

Do Candidates Really Need Our Help?

Absolutely! Each State House district has 87,000 people in it. Each State Senate district has 250,000, and Michigan has over nine million people. Just as we need to advertise our services, every candidate for office must be able to communicate with tens of thousands of voters. This takes money. Lots of it. Money for brochures, TV ads, radio ads, billboards and other devices. Our PAC can help the candidates we support get their message out and get elected. These are the elected officials who will listen to us and champion our issues.

What Can I Do?

MITA PAC needs your financial support. We are asking every member to step up and contribute. Don't let others carry your load.

Make Your Voice Heard. Support the MITA PAC.

"Those who choose not to be involved in democracy are doomed to be controlled by those who do."

— Abraham Lincoln

MITA PAC Contribution Form

☒ Yes, I will support MITA's effort to elect candidates who will fight for contractors.

Enclosed is my personal contribution of:

☐ \$10,000 ☐ \$5,000 ☐ \$2,500 ☐ \$1,000 ☐ \$500 ☐ \$200 ☐ \$_____ (Other)

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Non-salaried, non-managerial, and union members are prohibited by law from contributing to MITA PAC.

Note: PAC Contributions are not tax deductible.

If you have questions regarding the MITA PAC, please contact Mike Nystrom, MITA vice president of government and public relations at mikenystrom@mi-ita.com or call 517-347-8336.

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MITA would like to express our appreciation to those members who contributed after the printing of this publication.



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be included in the next magazine.**

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Founded in 1902, ARTBA is the only national association that exclusively represents the collective interests of all sectors of the U.S. transportation construction industry before the White House, Congress, federal agencies, media and the public. Information about the association can be found online at www.artba.org.

NEWS

www.artba.org

Presidential Candidates Talking Transportation Investment Following Minnesota Bridge Collapse

In the aftermath of the I-35W bridge collapse in Minnesota, the condition of the nation's transportation infrastructure network has taken on a heightened sense of awareness among the general public and the media. Not surprisingly, the issue has also bubbled up to the national political debate with presidential candidates from both major parties offering distinct perspectives on how they would tackle this challenge.

Democrats

Senator Hillary Clinton (D-N.Y.) August 8 released a "Rebuild America" plan that aims to address various infrastructure needs. Sen. Clinton's plan consists of a wide array of transportation and infrastructure proposals, including:

- \$10 billion over 10 years to address the more than 60,000 structurally deficient bridges;
- \$250 million to assist states in conducting emergency reviews of critical infrastructure to ensure safety;
- A \$1.5 billion annual increase in mass transit investment;
- A \$1 billion annual increase for intercity passenger rail activities; and
- A \$200 million increase for the U.S. Department of Transportation's congestion relief programs.

Senator Chris Dodd (D-Conn.) introduced legislation August 1 that would create a "National Infrastructure Bank" to provide direct subsidies, loan guarantees, and tax credit bonds for infrastructure projects costing at

least \$75 million.

How best to address the nation's infrastructure challenges was also the first question posed at an August 7 debate among Democratic presidential candidates. While virtually all participants agreed more must be done in this area, few specifics were provided.

Republicans

Infrastructure investment was also raised at an August 5 debate between Republican presidential candidates. Some highlights included former Arkansas Governor Mike Huckabee proposing to shift federal funds spent overseas to domestic infrastructure improvements. Rudy Giuliani said by lowering taxes when he was mayor of New York City he was able to generate additional revenues to repair the city's deficient bridges.

Arizona Senator John McCain criticized how Congress allocates transportation funds through earmarks and said he would veto any spending bill that included earmarks.

Former Massachusetts Governor Mitt Romney stated that through a strong economy we can generate new funding for our infrastructure. Romney also said fixing existing projects before starting new ones was a successful method he used in Massachusetts.

ARTBA members can access the complete Democratic and Republican debate transcripts about transportation issues in the "government affairs" section of www.artba.org.

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Congestion Stifling the Economy, Frustrating Drivers

Motorists' Group Demanding More Effective Fuel Tax Investments

The Texas Transportation Institute (TTI) at Texas A&M University recently released a report detailing the cost of wasted time and fuel in the 85 largest urban areas. The report finds that Americans wasted a record-high \$78.2 billion sitting in traffic congestion in 2005. 2.9 billion gallons of fuel and 4.2 billion hours of time were wasted in congestion.

The TTI report is more bad news for American motorists, who are already acutely concerned about the safety of American aging bridge and highway infrastructure.

The American Highway Users Alliance (The Highway Users) has called on Congress to refocus the national highway program on critical federal safety and mobility needs and elimination of wasteful diversions and embarrassing earmarks. According to President and CEO Greg Cohen, "Americans would be willing to pay more for a better program; one that focused on improving safety and mobility on our most important highways."

The Highway Users' Honorary Chairman, former Secretary of Transportation Norm Mineta, has said, "Congestion is not a scientific mystery, nor is it an uncontrollable force. Congestion results from poor policy choices and a failure to separate solutions that are effective from those that are not."

Unfortunately, effective mobility and congestion relief projects are often held up in bureaucratic red tape, or have taken a back seat to projects that divert fuel taxes away from critical highway needs. This has created public pessimism that congestion is inevitable and cannot be stopped. Such pessimism also causes frustrated government officials to avoid

responsibility by blaming the motorists themselves. Yet blaming drivers, tolling them and/or trying to change their behaviors has never helped them.

Much can be done to restore optimism, relieve congestion and increase driving freedom. One thing Congress can do is create a national competition among metropolitan areas to improve their mobility progress - with special funding awarded to the best urban areas. Another idea is to create a national program to eliminate the nation's worst commuter and freight bottlenecks.

Over the next 20 years, The Highway Users has found that relieving the country's worst 233 traffic bottlenecks would eliminate more than three-quarters of the delay at the worst chokepoints, save more than 40 billion gallons of fuel over the next 20 years, prevent half a million crashes, and reduce carbon dioxide emissions by nearly 400 billion tons.

Incredibly, there is no major federal highway program that effectively prioritizes congestion relief. Cohen concluded, "Today, many motorists are confused about how their fuel taxes are spent.



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Congress needs to address their concerns and establish safety and mobility priorities. Then motorists will renew their trust in the Highway Trust Fund."

The time to act is now!

The American Highway Users Alliance represents motorists, bus companies, truckers, RV enthusiasts, motorcyclists and a broad cross-section of businesses that depend on safe and efficient highways to transport their families, customers, employees and products. Highway Users members pay taxes that finance transportation spending programs and advocate public policies that dedicate those taxes to improved highway safety and mobility.

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THE 2007 URBAN MOBILITY REPORT

David Schrank
Associate Research Scientist

and

Tim Lomax
Research Engineer

Texas Transportation Institute
The Texas A&M University System
<http://mobility.tamu.edu>

September 2007

You can download the complete report by visiting the reference pdf section of the MITA website (www.mi-ita.com) and clicking on the Texas A&M Study link.

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Michael R. Mattila

Yalmer Mattila Construction

I don't think the Legislature is doing a very good job and don't think a lot will change unless we can put party politics aside. Nobody wants to make tough decisions for fear of offending somebody and losing the next election! It's time to put party politics aside and make the tough decisions!

Joel A. Dermid, P.E.

MACTEC Engineering

I think the Legislature is doing a very poor and ineffective job. They consider no efforts which may help the Michigan economy. They spend most of their time, when actually working, on unimportant issues. A solution to this situation might be a part-time legislature with no term limits. Most other states work this way and are obviously much more effective than Michigan.

John R. MacInnis, Consultant

JRM Consulting, LLC

I think the Legislature is doing a lousy job. I am blaming the short nature of their terms, I think the terms are much too short. Look at the lack of experience in the leadership. That is where it is most telling. The leaders are young and lacking in experience. It's almost like we have a part-time Legislature, with none of the good aspects. They just learn their jobs and they are out. They don't seem to have the big picture in mind. I am sure they mean

well, but they are all playing too much politics. It's time to make a deal. The governor does not seem to know enough about how things get done in the Legislature. Maybe she should hire John Engler to give her a fast seminar on how things get done and who you must tap to get it there.

P.S. We just got back from a trip to the southwest and stopped in Sante Fe, New Mexico, stopping by the state building. We pay our Legislature quite well. In New Mexico, they are paid nothing for their work in the Legislature. I understand they get some travel expenses only. It is a part-time Legislature. Should we be considering a part time Legislature?

Tom Gallagher

Harbor Springs Excavating

My answer is that they are doing a very poor job, and to ignore the infrastructure of the state, and more importantly, the education of the state's children is reckless to say the least. Ignoring this will only make matters worse in the future. I am tired of watching our taxes go to programs that help those who are capable of helping themselves and to inmates that have more comforts than people outside of the jail system. A little hardship does not constitute a free handout. At a minimum those on the receiving end of our "free money" should have to perform an equivalent amount public service work based upon minimum wages. If they expect improvement from there, then I would suggest that it is time to show some incentive and get a real job.

Mark Howard

Peters Construction Co.

Honestly, any and all achievements or accomplishments of this Legislature have become completely overshadowed by its inability to reach any type of budget legislation. The potential shutdown we are facing Monday would force us to endure a ridiculous and unnecessary hardship. It would undoubtedly cause cash flow problems for our company and would force the vast majority of our employees to suffer the financial hardship associated with being laid off, which in turn would be directly attributed to our legislators' inaction. If this shutdown does take place, I am sure our employees' collective perspective will be a lot of people in Lansing accomplishing little.

Bob Nobbs

Edw. C. Levy Co.

The Michigan Legislature, despite having many good well-meaning members, is doing a terrible job. They have had plenty of time to fix the budget problem and avoid a state shutdown but have not gotten it done. The leadership, Mike Bishop and Andy Dillon, are ineffective in directing their majorities in both the House and the Senate. The budget has not been passed because of politics. Neither caucus wants key legislators in vulnerable districts to vote for a tax increase or cut key programs and hurt their re-election chances and thus the political make-up of the house and senate. Tough decisions are not being made and the "best" for the state of Michigan is subordinate to seats in the House and Senate. Where is the leadership from the governor, the House or the Senate to make things happen? In the meantime Michigan continues to lose jobs and get national attention for high unemployment, housing foreclosures, major businesses leaving the state and a potential state shutdown. With



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this state of affairs who in their right mind would want to make major investments in Michigan as opposed to many other states? How does any of this dysfunctional legislative posturing lead to economic recovery for our state? As it stands now the Legislature is not part of the solution to Michigan's economic issues but rather a big part of the problem.

Chuck Van Deusen

Charles H. Van Deusen, Inc.

They are basically ill-equipped to handle this kind of problem. We need to cancel term limits. The action Sunday (Sept. 30) is a stopgap plan that could put the governor and Democrats in a "trick box." Bring back the experienced "old-timers."

Steven R. Funck

Posen Construction, Inc.

How can the aversion of a disastrous self-created shutdown be thought of as a victory? We generally have been given a business as usual compromise lacking in creativity and insight. Our so-called leaders stubbornly self-promoted polarized positions without regard to what was best for the state of Michigan. They had almost a year to restructure our tax system and improve our business climate. Marathon sessions throughout the night without time for review seldom lead to good results.

How long will it be before they have to tweak the new budget and tax structure flaws and ambiguities? Where will the future \$400 million in cuts come from? It is plain to see the fingerprints of special interest groups. Sports and entertainment appear to be too big to take on. Skiing can be taxed, but not golf; massage – taxed, hair color and cut – not taxed. Why?

We need to rethink term limits. Michigan deserves better.

WE'RE BUILDERS, TOO. OF PROFITS.

Executive Vice President Comment

Continued from pg. 21

that there are significant implementation problems with both the state and federal requirements. One of the most obvious problems involves the stark differences between the state law and federal Davis-Bacon Act.

Michigan law bases wage determinations on what is believed to be a bona fide agreement between an employer and a group of workers. Over the years Michigan's wage and hour folks have interpreted this to mean collective bargaining agreements. The feds, on the other hand, base rates on surveys of various geographical areas within each state. This flexibility has allowed for federal wage rate determinations for certain segments of our industry that are largely unorganized.

This is but one example of a litany of problems and confusion created by interpretations of both Acts. Given the political climate, it is unlikely that any meaningful reform is imminent. Until then we will continue to fight one fire at a time on your behalf.

To contact Bob Patzer, e-mail him at bobpatzer@mi-ita.com or call 517-347-8336.

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Questions and Answers Continued from pg. 20

ment of existing communities. Open market financing is always available to provide public sewer and water for new development, and many municipalities look to the developers in growth areas to finance needed infrastructure extensions. The Michigan Economic Development Corporation can sometimes be a source of technical and financial assistance in those situations.

Q: *Can you quantify the effect that the state's cleanup efforts are having in terms of limiting pollution, beach closings and other tangible results?*

A: This is a very difficult question to answer because surface water quality and beach closings are impacted by a variety of influences. To date SRF assistance has almost entirely been focused on wastewater collection and treatment infrastructure, resulting in dramatic reductions in the discharge of untreated and inadequately treated municipal wastewater. Storm water discharges and non point sources of pollution, as well as the discharge of industrial wastes and animal wastes, also exert effects on the water quality of Michigan's lakes and streams.

Vice President of Government & Public Relations Comment Continued from pg. 22

Areas where the construction industry may still feel some pain from this new service tax include: landscaping, environmental and geo-technical engineering, as well as some miscellaneous areas such as security guard services. Although MITA is in the process of clarifying the landscaping issue with the Department of Treasury, it looks as though there is a relatively minimal impact on the overall construction industry from this new tax.

Going forward, if you do see structural changes affecting your company due to this service tax, please contact our office so that we can be made aware of unforeseen circumstances. This sales tax on services is a can of worms that is now open since it will continue to be viewed as an opportunity to increase revenues as Michigan's economy continues to struggle in the next couple of years. The MITA staff will be diligent to make sure that the construction industry is not attacked in this regard to make up for funding shortfalls at the state level.

As we look forward, our challenges will continue to mount until Michigan's economy turns around. The willingness of the Legislature to go back to the table and increase transportation funding, no matter how much it is needed, through a tax and/or a fee increase will be even more difficult now while the general public and business community are crying foul due to these significant tax changes that have taken place over the last six months.

MITA will continue to fight the fight by promoting and protecting the industry here in Lansing. We need your help through your support of the MITA PAC and by giving us your input on a regular basis as to how these issues affect your company.

For any comments or questions, please contact Mike Nystrom either by e-mail at mikenystrom@mi-ita.com or call the MITA office at 517-347-8336.

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Vice President of Membership Services Comment Continued from pg. 23

the State of Michigan. If you refer to the Did You Know section of this magazine, the major issues that are undefined by the Act and captured in MITA's Best Practices Utility Locating Contract are defined. Michigan's major utility owners and MITA, through the Michigan Damage Prevention Board (MDPB), developed the Best Practices Contract. Bob Patzer is the chairman and I participate on the board.

The long and the short of it is: the contract is working and in many instances the major utilities are using the best practices portion of the contract as a regular business practice. So, the next natural step for the MDPB was and is to rewrite the outdated Public Act 53. This process has begun but please don't hold your breath. The MDPB is working off its ninth draft of what would be the new Act. We will accomplish this goal, but it will take time. The task will not be as simple as adopting the Best Practices Contract that only encompasses one portion of the Act. Not much time will be spent on developing the new Act. Rest assured that MITA will be involved every step of the way.

Annual Conference and the Presidential Black-Tie Event

Do yourself a favor and make it to this year's combo event. Come to one or the other, or, my hope, come to both. What else are you going to do in mid January? The event has been combined so that we can say hello to our incoming president and goodbye to MITA's current President Brian Slagter. Don't let the "black-tie" bother you, just come dressed in something other than work boots. The Annual Conference Keynote speaker is Team Hoyt, a touching father and son story. The featured entertainment for the Black-Tie Event is Mike Birbiglia, a regular comedian on the syndicated Bob and Tom radio show. I know you won't be disappointed!

To contact Rob Coppersmith, e-mail him at:
rob.coppersmith@mi-ita.com
or call the MITA office at 517-347-8336

Vice President of Engineering Services Comment Continued from pg. 24

on the project.

Per the U.S. DOL, the di minimis term or rule is solely associated with truckers and suppliers who spend a majority of their time off the site of work. In applying this rule to truckers and product and material suppliers, U.S. DOL acknowledges that those individuals provide products and materials to the work and allows them incidental activities or time on the site of work associated with those products and materials. U.S. DOL takes the position that this "incidental" time on the site of work is not subject to Davis-Bacon wages as long as it remains di minimis (less than 20 percent of their work week). This U.S. DOL interpretation is consistent with the interpretation and understanding documented in MDOT BOHIM 2004-21.

Highway/Underground Wage Determinations

With regard to the specific federal wage determination ("highway" vs. "underground") that is included in the contract documents for a federal-aid, MDOT-let project, we have established an understanding with MDOT. If the project includes underground work that is less than 20 percent of the total project estimated cost, the underground work is considered incidental to the highway work and the "highway" wage determination will be incorporated in the project proposal. Contractors performing the underground work in this situation can use the "Laborer - Open Cut" classifications included in that wage determination.

If the underground work is greater than 20 percent of the total project estimated cost, the underground work is not considered incidental, and both the "highway" and "underground" ("underground" included in the building and heavy wage determination) wage determinations will be incorporated in the project proposal. When both the highway and underground wage determinations are included in the project documents, both can be used for the appropriate work activities and worker classifications.

Truck Drivers - Davis-Bacon vs. Michigan Prevailing Wage

The issuance of BOHIM 2004-21 by MDOT provided the clarity and guidance industry needed on several previously misunderstood Davis-Bacon issues. In particular it clarified how truck drivers would be treated

("covered" or "not covered") on Davis-Bacon eligible projects.

Lacking specific written guidance or direction otherwise, industry has over time applied that same BOHIM 2004-21 guidance on truck drivers to Michigan prevailing wage projects. This practice seemed logical and it provided

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Vice President of Engineering Services Comment Continued from pg. 65

a consistent statewide standard the industry understood. Unfortunately we have very recently learned that the practice may not be acceptable. Michigan's Department of Labor and Economic Growth (DLEG) has informed us that their current policy on how truck drivers are treated on Michigan prevailing wage projects does not, nor is it required to, mirror the policy or understanding the U.S. DOL applies on Davis-Bacon projects. As the number of Michigan prevailing wage projects is relatively small, when compared to the number of Davis-Bacon wage projects in a given year, the impact of this truck driver issue should not strike a devastating blow across the industry. However, it will create significant confusion for those members who are involved on Michigan prevailing wage projects.

The MITA staff considers this issue a very high priority, and we are actively engaged with DLEG and MDOT to work on a resolution that is acceptable to our industry.

Operating Engineers/Laborers Overtime

Another situation that was recently brought to light involved the overtime compensation computation for operating engineers and laborers on both Davis-Bacon projects and Michigan prevailing wage projects. The collective bargaining agreements (CBA) for the operating engineers and laborers indicate that the vacation and holiday fringe benefits are paid for all hours of work and are thus subject to the 1.5 overtime multiplier when overtime hours are worked, the same as the base wage. Both the U.S. DOL and DLEG's Wage & Hour Divisions have accounted for this treatment of the vacation and holiday fringe benefit in

their published wage determinations. If your payroll accounting system doesn't apply the 1.5 overtime multiplier to the vacation and holiday fringe benefit for overtime hours, you may be subject to a claim by the enforcement agency that your operators or laborers are not receiving sufficient overtime wages and that you have an unpaid wage liability.

Labor Wage Rates and CBAs

As a matter of practice you should not rely on a CBA document for determining the current wage rates as those agreements typically include provisions for the allocation of any annual increases between wages and fringe benefits. To get the current effective labor wage rates or a copy of any of the underground or highway CBAs visit MITA's website at www.mi-ita.com, or call the MITA office at 517-347-8336.

While the enforcement and owner agencies continue their diligent efforts to ensure prevailing wage compliance, more issues will arise and new interpretations will undoubtedly be issued. The entire MITA staff remains committed to keeping you informed of any new interpretations, decisions or actions that may affect your responsibilities for prevailing wage compliance. If you get a notice of non-compliance, or come across a prevailing wage situation that just doesn't seem right, give us a call ... we're here to help you!

To contact Glenn Bukoski, P.E., e-mail him at glennbukoski@mi-ita.com or call 517-347-8336.

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Director of Technical Services Comment Continued from pg. 28

standards increased awareness and accountability to the ADA requirements.

Now that we have established how we arrived at ADA awareness, I want to point out some of the issues at hand.

According to the ADAAG, the running slope of a walking surface shall not be steeper than 1:20 and the cross slope shall not be steeper than 1:48. Although the guidelines state the maximum slopes, they neglect to say how they are measured. The measurement of these sidewalk slopes would seem to be straightforward; however, depending on the instrument used, the results can vary significantly. If an agency requires a four-foot wide sidewalk with a maximum two percent cross slope as defined in the ADA requirements, one might assume that a four-foot level could be used to measure that cross slope. In recent correspondence from Federal Highway Administration, we have learned that the proper way to measure slope is with a two-foot long digital inclinometer. The two-foot length was selected as it provides measurements over the same distance covered by the length and width of on average wheelchair, walker, crutch span or pedestrian stance. Constructing sidewalks is certainly not comparable to building a Swiss watch, but the need to ensure that sidewalks are constructed with uniform slope (both running and cross) has been elevated by the enforcement of the ADA regulations.

Counter slopes, those slopes created in transitioning from sidewalk ramps to road surfaces, are also problematic. Counter slopes for this application are the adjoining gutters and road surfaces immediately adjacent to the curb ramp. The ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) limits the slope for each joining surface to 1:20 (five percent). Reviewing the typical curb and gutter standard details used by many public agencies, reveal that the

gutter pan slopes exceed the five percent requirement. In many instances the gutter pan slope is eight percent. Therefore, when constructing a sidewalk ramp at a location with an existing or new curb and gutter, the gutter pan must be modified to meet the five percent requirement. This modification will, however, inherently affect the flow of water and likely cause a small pooling of water at the location where the five percent transitions to the eight percent.

The final noteworthy ADA compliance issue is the construction of the detectable warning surfaces at curb ramps. Truncated domes in a detectable warning surface have very specific requirements for the base diameter, top diameter and height. The detectable warning surface must have a visual color contrast with that of the adjacent walking surface. Due to the specific requirements set forth by the ADAAG guidelines, many agencies are requiring the use of prefabricated plates and not allowing stamped concrete for these applications.

So, going back to the title of this article, there is a significant need for a contractor working in any environment to be knowledgeable about ADA requirements and compliance. The consequences to contractors for improperly installed ADA/ADAAG requirements are huge as trial lawyers continue to win cases and owner-agencies get tough on 100 percent compliance policies. Several owner-agencies have already set precedent by requiring that incorrectly installed features be removed and replaced at the contractors expense.

If you have any questions about ADA/ADAAG requirements, MITA can help... give us a call at 517-347-8336.

To contact Doug Needham, e-mail him at douglasneedham@mi-ita.com or call 517-347-8336.



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whose employees vote to withdraw from the union are all deemed to have "withdrawn" from the plan. This triggers withdrawal liability, whereby the union sends a bill for the contractor's pro rata portion of the plan's current level of under-funding. To place this liability in perspective, a recent withdrawal liability estimate for a well established, medium-size contractor was in excess of \$1 million dollars. Likewise, if a contractor significantly reduces production and its corresponding contribution to the plan, the contractor may be deemed to have partially withdrawn and partial withdrawal liability may be triggered. A 70% decline in contribution has been the traditional threshold for triggering partial withdrawal liability. The partial withdrawal liability is calculated as a pro rata portion of complete withdrawal liability. 29 C.F.R. §4208.

The courts' interpretation of MPPAA has extended the liability beyond the company that contributed to the fund to related corporations and partnerships that are under common control. 29 U.S.C. §1301(b)(1); see also *Brown v. Astro Holdings, Inc.*, 385 F.Supp.2d 519, (E.D. Penn. 2005). "Companies are essentially held to be under common control when they are linked by either a parent corporation or group of five or fewer individuals who control 80% of a company's voting shares or profits." *Id.* If a company subject to withdrawal liability is linked through "common control" to a related company, the companies will be held jointly and severally liable. *Id.*; see also 26 C.F.R. §§1.414(c)-1 to 1.414(c)-5. Fortunately, as a general rule, the courts have not pierced the corporate veil and found company owners personally liable, in the absence of fraud. *Scarborough v. Perez*, 870 F.2d 1079, (6th Cir. 1989).

In the recent *Brown* case, however, the judge did pierce the corporate veil finding that the withdrawn company and the alleged alter ego company were "inextricably intertwined" and that the owners "failed to maintain corporate formalities" such that they "have effectively merged into a single enterprise akin to a partnership under which separate personalities of the corporation do not exist." *Id.* The court also found "nothing in the legislative history of the MPPAA that would indicate Congress intended to foreclose the use of veil piercing and allow individuals who abuse the corporate form to

escape liability." *Id.*

If the threat of being assessed liability for something that you did not control and could not prevent is troubling to you, there are some things that can be done to manage and minimize this risk depending on your business model and goals.

PENSION PROTECTION ACT OF 2006

In an effort to improve the financial health of defined-benefit pension plans, Congress recently passed the Pension Protection Act of 2006 (the "Act"), which applies to plan years after January 31, 2007. Generally, the Act tightens requirements for the calculation of actuarial assumptions, funding formulas and liability under the Act.

More specifically, the Act establishes criteria for determining when a plan "is in endangered or critical status;" requires annual actuarial certification of a plan's financial condition; and imposes the duty to notify all the parties if a plan enters endangered or critical status. In the event that a plan does enter endangered or critical status, the Act requires the adoption of an improvement or rehabilitation plan that is reasonably expected to bring the pension plan within the funding requirements within 10-15 years. If the bargaining parties fail to adopt an improvement plan for an "endangered" pension plan, then the Act imposes a default improvement plan. If a plan enters "critical" status, contributing employers will be obligated to pay a surcharge in the amount of 5% of their annual contribution during the initial year, and 10% each year thereafter until the plan is no longer in critical status or is covered under a renegotiated collective bargaining agreement that is consistent with the terms of the funding rehabilitation plan schedule.

Other provisions of the Act applicable to contractors include the following: plan administrators are now required to provide detailed financial reports and an estimate of an employer's withdrawal liability within 180 days, upon request; the maximum tax deduction is now increased to 140% of the plan's current liability; pension plan participants and their families will receive periodic reports regarding their fund's status;

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MICHIGAN LABORERS' TRAINING & APPRENTICESHIP INSTITUTE



Grant Charlick, an apprentice program graduate out of Laborers Local 1076 and an employee of Skanska, USA, considers MLTAI and the Construction Craft Laborer apprenticeship program an important part of his professional growth.

Charlick stated, "Having passed a college calculus class I expected that there was very little MLTAI could teach me about math, but with their unique approach to teaching I learned how the mathematic principles I learned in college apply in the real world. College didn't teach me that. Also, the wide variety of subjects taught at MLTAI as well as the variety of experience I've gained as a result of working for a general contractor has prepared me to take advantage of advancement opportunities that could come my way in the future."

Michigan Laborers' Training and Apprenticeship Institute provides training to apprentices and journey persons alike. Our instructors have a wide range of field expertise to provide our members with top-notch training using cutting edge technology. Our state-of-the-art training facilities located in the cities of Wayne, Perry and Iron Mountain accommodate on average 2,500 members annually. Courses range from 2 hours to 120 hours in length and include environmental training, construction training, life skills courses as well as on-line courses.

Graduates reaching Journey worker status can be granted college credits at virtually all of Michigan's community colleges.

MLTAI and the Construction Craft Laborers apprenticeship program produce Laborers skilled in their field, dedicated and trained. When Grant was asked what it takes to be a successful Laborer he said, "You have to show up every day in the right state of mind, with a proper attitude and be dependable, punctual and trustworthy. You have to bring your "A" game every day".

Union wages and benefits are among the best in the nation. If great money and benefits are of interest to you, contact a Laborers Local Union in your area or contact Michigan Laborers Training and Apprenticeship Institute.



Michigan Laborers Training and Apprenticeship Institute
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517-625-4046 www.mi-laborers.org

and an employers' withdrawal liability as a result of an asset sale is now also increased.

While the Act represents a significant change to the existing statutory structure, any impact will be noticed only in the long-term. In the short-term, these new requirements will probably not improve the financial health of pension plans or reduce a contractor's withdrawal liability. However, the Act should improve communication between all stakeholders, increase awareness of the issues and force the implementation of long-term improvement plans.

CONTRACTOR STRATEGIES

The first thing signatory contractors should do is establish a good working relationship with their collective bargaining agents. These people are in the best position to know about the fund's condition, how the fund's board of trustees works and the goals of the bargaining parties.

Contractors who wish to significantly reduce union operations, change to open-shop labor, otherwise cease contributing to a plan, or simply assess their risk should contact their legal counsel and request a calculation of their withdrawal liability from the plan administrator. Knowing the extent of your company's liability is essential and will allow a contractor to make informed, strategic business decisions.

Congress specifically created an avenue for the winding-down of operations in the building and construction industry in 29 U.S.C. §1383(b). It provides that a contractor may avoid withdrawal liability through the cessation of operation(s) or changeover to open-shop labor, if the contractor does not perform work in the building and construction industry within the jurisdictional boundaries of the previous collective bargaining agreement for at least 5 years. *Id.* Of course, this provision does not provide any relief to a contractor that wishes to continue operations in the same region. *Id.* Similarly, in the case of a collective bargaining agreement that covers the entire nation, the contractor may not perform work as an open shop contractor without triggering withdrawal. *Id.* This provision has also created some confusion for employers who thought they fell within this provision, only to discover that some of the company's shop fabrication and off-site manufacturing activities did not meet the criteria for being part of the building and construction industry. For §1383(b) to be applicable, an employer's activities must fall within the definition of building and construction industry as set forth in H.R. Rept 96-869 (Part I) (House Educ. & Labor Comm.), p. 76 (April 2, 1980). Contractors must utilize competent counsel versed in these issues.

If divesting is your goal, ERISA provides an exception to the withdrawal liability rule by allowing an arms-length asset sale to an unrelated entity without triggering withdrawal liability. 29 U.S.C. §1384, 29 C.F.R. §4204. As a condition of an asset sale, the purchasing party must agree to continue contributing to the plan and to post escrow funds or a 5-year bond to cover the withdrawal liability. *Id.* If the purchaser withdraws from the plan before the 5 years have elapsed and does not make the withdrawal liability payment, then the seller owes the payment. *Id.* A seller may reduce liability by informing the plan of the sale in writing and demonstrating that the sale is to be covered by a §4204 variance to the bond and escrow requirement. A seller qualifies for the variance if (1) the contributions "[do] not exceed the lesser of \$250,000 or two percent of the average total annual contributions made by all employers to the plan" or (2) if the purchaser's net income equals 150% of the amount of the bond or escrow or net assets equal to the liability. See §4204.11 to 4204.13 for the accounting details. A seller can limit the post-sale liability even further through the use of an

indemnity agreement as a term of the contract. Nevertheless, the prospect of pension liability by prospective purchasers may unexpectedly reduce the value of the sale, if the seller has not already taken the pension liability into account. Furthermore, it may be difficult for the prospective purchaser to calculate the potential liability, based solely on the seller's financial statements. These issues require significant due diligence during a merger or acquisition. Legal counsel should be sought to fairly assess and allocate the liability between the parties.

Growing entrepreneurial contractors who wish to reduce the percentage of their assets that are exposed to pension liability may want to diversify investment into other similar operations. Diversification of your investment may be accomplished by purchasing existing operations through asset sales and partnerships but make sure to limit "common control" according to the ERISA definition.

For union contractors who wish to maintain or grow their operation and have a continued interest in the success of the plans, the most practical course of risk management is active involvement. Contact your collective bargaining agent, meet with your union representative, learn about your plan's condition, your liability, the current action plan, and help create a solution that will ensure a future for the employees and employers who have invested in these plans. Solutions to such problems can only be reached through competent counsel and the diligent attention and action of all stakeholders.

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MITA 2007 Calendar

For details, visit www.mi-ita.com, or e-mail
MITA's Events Coordinator Danielle Coppersmith
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2007 MITA BOARD MEETINGS

Friday, December 14, 8:30 a.m. — MITA Office

MDOT BID LETTINGS

Friday, December 7, 2007

DECEMBER 2007

- 7** WMR Holiday Open House
The BOB, Grand Rapids
11:30 a.m. – 2 p.m.
- 14** MITA Board Meeting
MITA Office
8:30 a.m.
- 21** MMR Holiday Open House
Sheraton Detroit Novi,
11:30 a.m. – 2 p.m.



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... and Coming Events in 2008

The MITA 2008 Calendar was being prepared when we went to press with the magazine. You will receive one in the mail as soon as it is prepared, and the information will be posted in the events section of www.mi-ita.com.

You won't want to miss the MITA 2008 Super Conferences, which will run on various dates throughout the state between January 25 and February 29. You will be receiving a sign up form in the mail. If you have any questions about these events (listed below), please contact MITA's Event Coordinator Danielle Coppersmith at daniellecoppersmith@mi-ita.com.

MITA 2008 Super Conference Schedule:

- Friday, January 25
The Sterling Inn, Sterling Heights
- Friday, February 1
The Crowne Plaza, Grand Rapids
- Friday, February 22
Horizons Conference Center, Saginaw
- Friday, February 29
The Holiday Inn South, Lansing



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MITA in the News

To see a complete listing of MITA in the News, download stories, and access links to outside websites, please visit the "MITA in the News" section of www.mi-ita.com. "MITA in the News" is located at the lower left corner of the home page.

The following stories are samples of the news coverage MITA has generated in recent months.

Detroit Free Press

\$1 billion more needed for roads

October 17, 2007

Cuts in spending on road and bridge construction could cost Michigan more than 12,000 jobs over the next three years unless the state raises an additional \$1 billion a year in fuel taxes and vehicle registration fees, a coalition of business, government and labor groups backing the tax hikes said Wednesday.

Without an increase, funds for road building will drop by 40% by 2009, forcing companies in the industry to relocate and layoff employees and sending ripples widely across the Michigan economy, said Mike Nystrom, vice president of the Michigan Infrastructure and Transportation Association.

"Business doesn't want to invest in a state that doesn't invest in infrastructure," Nystrom said, adding that an additional \$1 billion in road funding is "the minimum that the state needs."...

Detroit News

Shutdown would have broad impact: Ailing state's image, economy on the line

Friday, September 21, 2007

A Michigan government shutdown on Oct. 1, which grows more likely with each passing day, would deliver a blow to the state from Main Street to Wall Street, political and image experts agree ...

... State officials have notified road builders that state highway projects would cease during a government interruption, said Mike Nystrom, vice president of government and public relations for the Michigan Infrastructure and Transportation Association.

That means the orange barrels will stay up, but there'll be no work crews.

"We're already in a slowdown mode because of the economy, and this will only put us further behind the eight ball," Nystrom said. "If we are pushed back by even a week, it might mean we won't complete a project this year." ...



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Detroit Free Press

Hiring workers in the city is ordered

September 15, 2007

A policy that mandates companies performing publicly funded construction projects fill 51% of the project's jobs with Detroiters is drawing concern from construction interests.

But Detroit Mayor Kwame Kilpatrick's administration said the order, scheduled to take effect Nov. 1, is needed because construction companies hire few city residents.

The order, which Kilpatrick issued Wednesday, primarily would impact road, water and sewer construction.

Officials with the Michigan Infrastructure and Transportation Association and the Michigan Concrete Paving Association said the policy would make it more difficult to do business in Detroit.

Mike Nystrom, vice president of the association, said if every city enacted a similar policy, the construction industry would be brought to a halt.

"We can't be putting fences up around communities all over the state," he said.

But Sharon McPhail, the city's general counsel, said if firms don't like the requirement, they don't have to compete for city work ...

WLNS TV 6 - Lansing

Delivery of Concrete

September 5, 2007

Mike Nystrom, MITA's vice president of government and public relations, was interviewed by Channel 6 television in Lansing Sept. 5, regarding MITA's delivery of concrete to the legislature and the governor that was collected from beneath bridges in Michigan.

Detroit Free Press

Chunks of bridges not so subtle reminder

September 10, 2007

The Legislature got a bit of a surprise in boxes last week when a state construction trade group hand-delivered pieces of pavement collected from beneath state and local bridges across Michigan.

All state senators, representatives and Gov. Jennifer Granholm received the chunks...

"It's a wake up call to the Legislature to recognize that the infrastructure needs in our state are dramatic, and they need to do something about it sooner rather than later," said Mike Nystrom, spokesman for the Michigan Infrastructure and Transportation Association, a trade group representing road, utility and other construction trades. "If they wait, it'll be even more costly in the future." ...

Detroit News

Minn. bridge collapse should fuel state gas tax hike, backers say

August 9, 2007

The collapse of a Mississippi River bridge in Minneapolis last week should alert Michigan leaders to needed road and bridge repairs here, backers of an uphill campaign to increase the state gas tax said Wednesday.

Mike Nystrom, co-chairman of the Michigan Transportation Team, said more than 3,000 state bridges are structurally deficient or functionally obsolete. There are weight restrictions on more than 1,100 bridges in cities, townships and villages whose revenue sharing from the state has been curtailed as a result of budget problems, his coalition said.

"Unfortunately, crumbling bridges and deteriorated roads are fast becoming another far less flattering symbol of our state," said Nystrom, who also is vice president of government and public relations for a road industry group, the Michigan Infrastructure and Transportation Association ...

WILX-TV Lansing

Lobbyists, Lawmakers Battle Over Bridge Funding

Wednesday, August 8, 2007

It's no secret Michigan roads and bridges have seen better days. In fact, according to the lobbying group the Michigan Infrastructure and Transportation Association, or MITA, Michigan's roads are in worse shape than Minnesota's, the site of last week's deadly bridge collapse.

"This is not a scare tactic," said construction lobbyist Mike Nystrom. "This is a wake-up call.

Nystrom, along with the Michigan Chamber of Commerce and other road groups, are challenging the legislature to find more money for improvements.

"This is an opportunity to improve safety, to save lives," he said.

But that doesn't come cheaply. Nystrom is proposing an extra \$1 billion annually for bridge and road repair. He says it can be done by raising the gas tax three cents a year for the next three years in addition to doubling registration fees....something Senate Majority Leader Mike Bishop says will not happen ...



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