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MEMORANDUM

To: Brian Lawlor
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From: Terry Steczo
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Re: Legislative Report

Date: March 31, 2016

General Assembly Committee Deadline April 8

After taking much of the month of March off the General Assembly gets back to work next week and the first thing facing the members is an April 8 deadline for hearing bills in House and Senate Committees. That's not much time to hear a boatload of bills so not all will be posted and not all will be heard. But, as long as bills appear on a committee's agenda there is every reason to believe that a vote will be taken and we must make every effort to make our position known.

Bills that have been introduced that ISRC has an interest in following and that have been posted for a hearing next week are:

- HB 5029 - Amends the Smoke Free Illinois Act. Provides that smoking is allowed in facilities constructed prior to August 14, 2015 for the purpose of compliance with the Act. Requires that such facilities have signs clearly stating that the building or area is used for smoking. Grants the Department of Public Health rulemaking authority to implement this exemption
- HB 6333 - Annually requires each school district, public school, charter school, or nonpublic school to request an asthma action plan from the parents or guardians of a pupil with asthma; Requires the State Board of Education, in consultation with statewide professional organizations with expertise in asthma management, to develop a model asthma episode emergency response protocol before September 1, 2016, and requires each school district, charter school, and nonpublic school to adopt an asthma episode emergency response protocol before January 1, 2017 that includes all of the components of the State Board's model protocol. Provides that, every 2 years, school personnel who work with pupils shall complete an in-person or online training program on the management of asthma, the prevention of asthma symptoms, and emergency response in the school setting. Requires the State Board, in consultation with statewide professional

organizations with expertise in asthma management, to make available resource materials for educating school personnel about asthma and emergency response in the school setting.

Thanks A Million(s)

In Illinois and in other places politics can be very unpredictable. And as seen in the recent primary election cycle it can be pretty expensive too, especially with participants who throw hundreds of thousands of dollars and more around like it was pocket change. Now that the dust has settled on the election and the results are in the major question is whether or not all the spending, charges and electioneering made any difference. Unfortunately, the apparent answer is no.

Who would have ever thought that there would ever be a day when \$6.2 million would be spent on a primary election race for state representative? Or \$4 million for a state senate primary election race? But it happened this past cycle. It was just a few years ago when a statewide race for governor cost less than either of these two primary election races, but with loosened rules governing campaign contributions and participation the sky seems to now be the limit.

There were a number of contested primary election races throughout the state but one contest for the state house and one for the state senate gathered most all the attention and were races that most thought could create the impetus to one way or another break the budget impasse.

In the 5th House District in Chicago Rep. Ken Dunkin broke with the Democratic legislative majority last summer and publicly sided with Governor Rauner. If Dunkin succeeded in retaining his seat it could have provided the Governor with some tactical and argumentative advantage in his war with the legislature. But that "advantage" was not to be as Dunkin was soundly defeated by a 2-1 margin after over \$6 million was spent by both sides. Dunkin received over \$1.5 million in assistance from IllinoisGo, an independent expenditure committee that was established shortly after Governor Rauner's election and which is funded by six benefactors. They spent a smidgen over \$1.5 million. The Illinois State Chamber of Commerce PAC got involved with Dunkin too, to the tune of \$970,000. Dunkin's total contributions exceeded \$3.1 million. His opponent, Julia Stratton, was no slouch in the fundraising department either and raised \$2.9 million. The Governor really wanted this one to prove a major point but voters in the district had different ideas.

The race in the 50th Senate District in central Illinois may have been even more telling. Sen. Sam McCann opposed the Governor Rauner on one veto override vote last year. At the beginning of the 2015 legislative session the Governor told the GOP caucuses that he expected complete loyalty or else. In the 50th District primary election they got a glimpse of what "or else" means. Over \$4 million was spent by both McCann and his opponent, Bryce Benton. Of that amount three quarters, over \$3 million, was provided to McCann's opponent by a group called Liberty Principles PAC run by Dan Proft, a conservative radio commentator from Chicago. One interesting tidbit is that Liberty Principles PAC received a \$2 million transfer from another fund called Turnaround Illinois that is primarily funded by Governor Rauner. The Governor took this race very seriously even taking the bold step of actually endorsing and making appearances with Benton as primary election day approached. Even being outspent by a margin of 4-1 McCann pulled off an impressive 53%-47% victory. With the Governor so heavily

and personally involved it was easy to construe this race as a referendum on his performance in office. In the days since he has rebutted any hint of that being the case and has reverted back to his previous pronouncements and plan of attack.

It was obvious from the results of these two closely watched races where both sides made a major investment that the Governor's forces had a dreadful return on theirs. But, in the days since election day the Governor has made it clear that these results will not change the dynamic in Springfield one iota. So the input from voters that could very well have provided some impetus to restart discussions on a state budget now can be looked at as merely a blip in the ongoing battle that seemingly has no end.

In another race that observers were watching, but not as closely as these other two, the Rauner forces and those of former Governor, Jim Edgar, were locked in a battle over a state House seat in east central part of the state. Edgar has not been friendly to Rauner and has often criticized his actions. Last October Edgar was quoted as saying about the Governor, "He does not come from government ... He doesn't even really come from mainstream business. He comes from (being an) entrepreneur where you buy a business, you tear it apart and you sell it. ... I don't think you're going to tear apart the state and sell it. He might want to, but you can't do that." As it happened Edgar was supporting school superintendent Jim Acklin for the House seat being vacated by retiring Rep. Adam Brown. Former Rep. Brad Halbrook decided to run for election as did a third candidate, Randy Peterson. Halbrook received the backing of both Rauner and a \$300,000 contribution from Liberty Principles PAC and won. The final result showed Halbrook with 44%, Aklin with 38% and Peterson with 18%, not a mandate but good enough to notch a win and some push-back on Edgar from the Governor's perspective.

There was optimism on March 14 that the results on the next day could shed some sunlight on the seemingly endless budget standoff. Instead, the end product seems to have been step deeper into darkness.

Deepening The Hole

If not having a budget for the past nine months hadn't created enough uncertainty, the revenue estimates that were projected for FY 2017 from the Commission on Government Forecasting and Accountability (COGFA) should serve as a sobering reminder of the state's teetering fiscal condition. COGFA, the legislative agency that has a pretty consistent record of correctly predicting anticipated revenues, predicted a few weeks ago that they expected only \$200 million in new revenues for the new year, a fairly paltry sum. The culprits, according to their report, are corporate income taxes, sales taxes and public utility taxes that won't be bringing in as much as anticipated. Not good news for a state that has a \$4 billion revenue gap without this development.

To add fuel to the fire, the Comptroller indicated a few weeks ago that she expected the state's stack of unpaid bills to reach \$10 billion by summer. Recalling that \$10-\$12 billion was the estimated backlog when former Governor Quinn took office it looks like Illinois is in a major regression. During the Quinn years the legislature took control of the budget process and with the exception of the last Quinn budget year tried to rein in the process by conservatively estimating revenues, setting aside funds for required payments such as pensions, health care, debt service, etc. and budgeting the remainder for programming. Over four years the bill backlog was reduced to about \$4-5 billion. Of course, the temporary income tax revenues increase helped. Those

additional revenues are gone, but so, too, is the entire budget process. And the downward fiscal spiral continues. At this point coming to any budget agreement is almost irrelevant because of the worsening backlog of unpaid bills and the increasing need to provide some revenues to make a dent in the stack. The question everyone should be asking is how the Governor and the legislature are going to make ends meet with whatever budget they can agree on ... if that ever comes to pass. New revenue has always been a tough sell in the General Assembly and with the tenor on the street being less than amenable it would be even tougher this year.

In the meantime the Democratic majorities in the legislature have made a number of efforts to assist the two areas that have not been included in any agreements, court actions, continuing appropriations, or anything else. Legislation to provide some human services funding and for student grants and for community college programs was approved by the General Assembly and vetoed by the Governor. The veto was upheld. A second effort is being made to provide these funds and a bill should be on its way to the Governor's desk shortly after the session resumes next week. The outlook for gubernatorial action looks to be the same. Since the Democratic majority in the House is no longer veto-proof actions to assist human services and higher education won't occur until or unless a broader budget deal is reached.

Last week the Illinois Supreme Court ruled in a certain case that AFSCME members couldn't be paid back wages without a specific legislative appropriation. Since, logically, that same principle should apply to regular wages as well as back pay there is some thought that this ruling might hasten an end to the budget impasse. Governor Rauner told state employees last summer that that would be paid whether or not there was an appropriation as that has been the case since. If the courts treat regular pay in the same manner as back pay, and if the state doesn't have the funds to appropriate to pay regular wages then state agencies would have to shut down. That shut down could get the parties talking about a resolution. There are lots of questions and hurdles to be answered and overcome even with this scenario, especially where the additional needed revenue is going to come from, so it remains to be seen if this decision can be a catalyst.

What may loom just as important is the United States Supreme Court ruling on union "fair share" agreements on Tuesday where a 4-4 tie upheld such agreements. Governor Rauner has made the abolition of "fair share" one of his main priority goals and has a similar lawsuit winding its way through the federal court system. The Governor's quest through the legal system would probably be enhanced with a Republican president filling the Supreme Court vacancy and dashed with a Democratic appointment. If he feels that the November election results will result in a more progressive replacement he could choose to abandon that goal and move ahead, negotiating a package that results in a smaller win. Ohio Governor John Kasich and others have recommended that strategy to Rauner over the past year but he has rejected it. Now, in light of adverse court rulings and election results, may be the time to rethink that strategy.

Supreme Court 3, Pension Bills 0

Last week the Illinois Supreme Court struck down yet another pension reform plan, this time the one from the City of Chicago that made changes in employee benefits. It makes the third time that the Court has held pension reform plans unconstitutional.

In a unanimous 5-0 opinion the justices reaffirmed Article XIII, Section 5 of the Illinois Constitution that states, "*Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired.*"

Over the last few years there has been great debate and conversation about exactly how to fashion reforms for current employees and retirees that meets the constitutional test. Once again, it's going to be back to the drawing board for all involved to see whether or not there is some pathway that the Court will accept. As recent history has shown, it's not going to be easy. Plus, each attempt at convincing the court that a plan meets their test, whatever that may be, requires up to two years to get a final decision so any cost savings expected to be derived have to take the time element into account.

The Chicago case contained an element of the concept of "consideration" or bargaining in exchange for reduced benefits. A large plurality of unions accepted a bargain for the reductions at issue in the lawsuit. Those that did not sue and won. But, all may not be lost on the pension reform front and the Court may have actually given some hint as to what it may accept by way of pension reforms.

From the time of the first pension reform court cases the General Assembly, the Governor and others have been looking for clues as to what may be acceptable to the Court. In the May, 2015 decision that threw out Senate Bill 1 the pathway to any solution was as clear as mud. But, the Court did make a reference to "consideration" by stating, "Additional benefits may be added of course and the state may require additional contributions or other consideration in exchange." But the Court never really explained what that meant. In the Chicago case the Court went a bit further saying, "nothing prohibits an employee from knowingly and voluntarily agreeing to modify pension benefits in exchange for valid consideration from an employer." So it appears that there may be some legitimacy to the "consideration" argument and hopefully that's what the Court has telegraphed.

Could some pension reform legislation emerge before the end of the current legislative session? With the Chicago decision, and if the Governor and leaders decide to not let pension reform get tied up with the budget impasse there is a possibility. What could that look like? For sure there will be an effort to frame "consideration" in a way that would meet a court test and take pressure off the unwieldy payment schedule. How that would look specifically is unknown. Also, in its 2015 decision the Court offered a comment that the General Assembly could have adopted a new payment amortization schedule but chose not to. That may be on the agenda as well. In addition, there have been bills introduced that would allow a lump sum buyout at retirement and in return foregoing regular pension payments. Other more minor reform ideas will no doubt follow. It may be the most opportune time yet to have a serious discussion about reforms that may actually pass Court muster.

Session Schedule/Deadline Dates

Here are relevant dates for the 2016 legislative session:

- April 8 – House/Senate Committee Deadline
- April 22 – House/Senate 3rd Reading Deadline
- April 25 - May 1 - Passover Recess
- May 13 – House/Senate Committee Deadline (Bills from other chamber)
- May 27 – House/Senate 3rd Reading Deadline (Bills from other chamber)
- May 31 – Session Adjournment

Legislation of Interest

SB 32 – Sen. Morrison - Amends the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act. Provides that a person under 18 years of age shall not possess an alternative nicotine product. Establishes penalties. **(Status – Passed House; Senate - Concurrence)**

SB 1862 - Sen. Rose - Amends the Hospital Licensing Act. Requires hospitals to adopt, implement, periodically update, and submit to the Department of Public Health evidence-based protocols for the early recognition and treatment of patients with sepsis, severe sepsis, or septic shock that are based on generally accepted standards of care. Requires the protocols to contain certain components, including components specific to the identification, care, and treatment of adults and of children. Requires hospitals to submit the protocols to the Department no later than 6 months after the effective date of the amendatory Act. Provides that protocols shall be resubmitted at the request of the Department, but not more frequently than once every 2 years unless the Department identifies hospital-specific performance concerns. Requires hospitals to report certain sepsis-related data to the Department. **(Status – Senate – 3rd Reading)**

SB 1919 – Sen. Morrison/Rep. Evans - Amends the Cigarette Tax Act and the Tobacco Products Tax Act of 1995. Provides that a person who is both a licensed distributor and a licensed retailer shall be issued a single license number by the Department of Revenue. Provides that records may be kept electronically and may be kept at an out-of-state location so long as those records are made available upon reasonable notice for the purpose of investigation and control by the Department of Revenue. Amends the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act. In provisions that provide for increased penalties for retailers that do not have training programs, provides that those training programs may be conducted electronically. Provides that, if a retailer has a training program in place prior to the effective date of the amendatory Act, has a training program approved by another state, or follows the guidelines set forth by the federal Food and Drug Administration, then that training program shall be deemed to meet the minimum standards in this State. Effective January 1, 2016. **(Status – Passed Senate; House – 2nd Reading)**