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MEMORANDUM

To: Valerie Klans  
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From: Terry Steczo

Re: Legislative Report

Date: June 1, 2015

**Sunset Legislation Goes To Governor**

Senate Bill 973, the Respiratory Care Practice Act ten year sunset extension has received final approval from the General Assembly and will soon be presented to and considered by the Governor. The legislation contains each and every modification and recommendation that was the ISRC determined was important to make the Practice Act as up-to-date as possible.

Since January, discussions with the Illinois Hospital Association, HCCI and others proved fruitful and helped shape the latest version of the legislation. However, those discussions could not have taken place had there not been language to discuss and the ISRC members that created the proposed amendments to the Act provided a valuable service to those who practice respiratory therapy. They deserve major thanks for quick responses to issues, questions and language suggestions as ongoing and final discussions took place. Additionally, many legislators remarked that they had heard from ISRC members during critical times in the session.

The Governor will have until the end of August to approve SB 973.

**Legislation Update:**

Here is a sampling of new legislation that has been progressing through the legislative process:

**.HB 3531 – Rep. Golar** - Provides that it is a violation of the Act for any person to smoke tobacco in any area of a day care center, day care home, or group day care home. The legislation clarifies conflicting language in the Smoke Free Illinois Act and the Illinois Child Care Act – Passed Both Houses

**SB 32 - Sens. Morrison and Martinez** - Provides that a person under 18 years of age shall not possess an alternative nicotine product. Establishes penalties. Passed Senate; House must concur with Senate amendment.

**SB 729 – Sen. Silverstein** - Prohibits operation of a motor vehicle while a person is smoking in

the vehicle and a person under the age of 18 is present in the vehicle. Provides that police officers may not stop or detain a motor vehicle or its driver for violation or suspected violation of this Section. Makes a violation of this Section a petty offense with a fine not to exceed \$100 – Lost by a vote of 8-32-3

**SB 1919 – Sen. Morrison** - Provides that a person who is both a licensed cigarette and tobacco distributor and a licensed retailer shall be issued a single license number by the Department of Revenue. Training programs may be conducted electronically. 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. Passed Senate; Held on 2<sup>nd</sup> Reading in House.

### **Entering the Twilight Zone**

When the legislature adjourned last night without a budget and without an understanding or an agreement with the Governor about a fiscal plan for FY 2016 the focus of speculation has turned to what happens next and what will it take for the disparate interests involved to come together and formulate some plan that they can live with? The road to this point has been pretty bumpy with threats, games and theatrics part of the messaging plan thus far. The Governor has amassed a war chest of \$34 million comprised of contributions from himself and a few friends that he'll use to scour the legislative leadership and their members during the overtime session. Whether he'll use it or not is undetermined but such a "scorched earth policy" may have some impact in the short term but the long term consequences may be less than desirable. The General Assembly, on the other hand, has made a showing of its distaste for any and all of the Governor's "Turnaround Agenda," scheduling long public hearings before overwhelmingly defeating each and every item. Now, as the legislative session enters overtime it's hard to predict where everything will wind up and how ugly it's going to get before some agreement on budget and issues is accomplished. There will be an agreement, that's for sure. But whether the process of getting there causes bad blood that lasts for the next three years is the \$34 million question.

If the discussions were held only to the budget there would be some positive vibe that some agreement could be reached fairly quickly. The budget suggested by the Governor in February and a budget crafted by the legislative Democrats in May were both short by anywhere from \$2-4 billion, not surprising given the expiration of the temporary income tax last January that cost \$3.6 billion in revenue. Even though the fiscal "visions" of the Governor and legislative leaders vary widely when the discussion is limited to fiscal issues then there is great opportunity for compromise and accomplishment. Governors Thompson, Edgar and Ryan operated in that fashion with much success. While the Governor Rauner's budget plan was never officially drafted in bill form and considered, legislative Democrats did approve their budget plan but have utilized a parliamentary maneuver to keep the bill from moving to the Governor's desk. But this year's discussions thus far have been about everything else with budget negotiations taking a back seat and that's why no one knows where and when a final agreement will occur, what it will look like, and how much blood will have to be spilled before it happens.

Now that the May 31/June 1 demarcation line between the regular and overtime legislative session has been crossed a main question to be answered is whether or not the Governor will insist on having his "Turnaround Agenda" enacted before there is any serious discussion of budget and revenue items. That agenda includes a permanent property tax freeze, workers compensation, unemployment compensation and tort reform, municipal bankruptcy, "right to work" zones, term limits and a number of other items. It has been reported that the Governor's non-budgetary list of items to be discussed was in the neighborhood of 80 ... a huge amount. The

complete list has never been made public. The Governor has also indicated that some items have been taken off the discussion table, but none of those have been officially disclosed either.

The state's fiscal year begins in July 1, so there is still adequate time to come up with a budget plan and resolve some of the other issues if both sides can look for middle ground and accept that compromise is the hallmark of good governance. Now that the overtime session is upon us both legislative leaders and the Governor will be hard pressed to bring legislators back to Springfield until a deal is reached. A picture of legislators lounging while waiting for a compromise that could take weeks to occur is not the perception that they want to create. On the other hand, having legislators at home while the state leaders throw verbal rockets at each other doesn't convey a great impression either.

If July 1 passes with no agreement then all bets are off and we'll be waiting to see if the Governor's "scorched earth" threats will come to pass. So the question to be answered between now and the time an eventual agreement is reached is whether or not we are in store for a "war to end all wars" or a statesman-like solution to take the first steps to get Illinois back to fiscal health.

As far as the process of creating a budget goes, yesterday afternoon Speaker Madigan indicated that the House will be in continuous session throughout the summer but no per diem or mileage will be paid to members. The next House session day will be Thursday, June 4. After Thursday House members will get a 48 hour notice to return. The Senate has also announced that they will be in continuous session throughout the summer and will be called back by the Senate President when necessary. The Senate will not be in session on June 4 but is planning to be back in Springfield on June 9.

### **A Good Spanking**

Well, the General Assembly got what they wanted but they didn't want what they got. That was the takeaway from the Illinois Supreme Court ruling on May 9 that definitively ruled that the Pension Clause of the Illinois Constitution is about as ironclad as can be. Of that the Court left no doubt. The next question is ... now what happens? If the legislature and the Governor were wishing for the Court to give them a roadmap to help determine what may or may not withstand Constitutional muster they didn't get it. Rather, they got a pretty good scolding in a ruling that all seven Justices signed on to.

In their opinion the Justices not only rendered an opinion of the law but they also provided a history lesson ... citing that the lack of adequate pension funding can be traced back to **1917**. For those who think this is a recent problem, think again. They also took a swipe at the legislature's attempt to convince the Court that the reforms were necessary due to a fiscal emergency. The emergency, they said, was the legislature's own doing and they could have helped soften the impact by reamortizing the pension payment schedule and letting the income tax increase lapse, among other things.

So now it's back to the drawing boards. But where? The Court indicated that retirement benefits are protected from diminution the day a person starts on the job. Over the course of employment those benefits can be enhanced but not diminished. The Court seemed to imply that a law that offered some enhanced benefit in exchange for another diminished benefit might survive but that wasn't really crystal clear. That idea was put forward by Senate President John Cullerton but rejected in favor of the plan that the Court rejected. Cullerton has put his plan, called "consideration", back on the table. Governor Rauner also had mentioned a plan that would freeze employee benefits as of a certain day and move them to a 401(k) type of system. The Court

pretty much kyboshed that too. The Governor has also mentioned a Constitutional Amendment to change the provision of the Constitution preventing modification of benefits. Even if that were to occur it wouldn't be able to appear on the ballot until November, 2016 and there would be a serious question as to whether it would be applicable to anyone but new employees. Lots of questions, not very many answers as yet.

And, adding to the overall problem of unfunded liability and budget pressures, it's estimated that the pension payment for FY 2016 will increase by approximately \$700 million. Most of the increase is due to the pension systems downward revision of anticipated investment earnings by about a half percentage point.

Depending on how long the legislative session lasts there may not be enough time to come up with another reform package in the short term but there certainly should be some plan that appears by the fall. Regardless of which plan it is there will no doubt be another lawsuit filed which means potentially two years before any benefit was derived ... and only IF it was held to be constitutional. In the meantime the General Assembly and Governor could agree to create an adjusted and prolonged payoff schedule that could ease budgetary pressures and could also consider other such issues that could have a positive impact without the threat of unconstitutionality held over their heads.

### **Springfield Cicada**

Whether you call it a pest or call it a vital part of the economic ecosystem of Illinois, for the last umpteen years you can count on its arrival every May where it lingers for most of the month and then disappears every June to await the next legislative cycle. This yearly "cicadaesque" manifestation is the never ending annual attempt to enact expanded gaming in Illinois. And, like clockwork, it's back. Every May hope springs eternal and every June supporters walk away disappointed and dejected and plan for next year.

Could 2015 be their year? Some things have changed in their favor such as a new Governor who seemingly doesn't have the same hang-ups about gaming expansion as the former Governor. There is also more heated competition from neighboring states, like Indiana that is on the verge of allowing some land-based gaming. On the other hand, opponents point to oversaturation of the Illinois market with the advent of statewide video poker and diminished revenues for current riverboat casino licensees. The atmosphere for a successful bill seems to be better than it has been for a long time but that has never stopped gaming expansion forces from finding a way to derail their own efforts.

The problem expansion advocates face is scale. The "haves" don't want erosion of their markets to they are the entrenched opposition. Their forces have expanded with the video gaming group. Add to that the reasonable assumption that the next gaming package may be the last one for a long, long time if Chicago gets their wish and their own casino. That being the case, everyone who has any desire to have any gaming opportunities knows it's now or never. That means that other Illinois area such as Lake County, Rockford, Danville, south suburbs, etc. may have their last chance after being on the table for years. Also, race tracks want in on the deal and have upped the ante. After years of arguing for slot machines they have now decided that they want some table games too. And the list may grow.

It's too early to tell how the 2015 version of the annual gaming expansion foray will do. But, if it fails once again to gather enough support then you can count the days until next May when the chirping will begin again.

## Session Schedule/Deadline Dates

Here are relevant dates for the legislative session:

- House/Senate Overtime Session – Times TBA
- Veto Session – Time TBA

## Legislation of Interest

**HB 408 – Rep. Zalewski** - Makes changes in the definitions of "basic respiratory care activities", "licensed health care professional", and "respiratory care". Allows individuals without a license to practice respiratory care to perform basic screening spirometry if certified by the National Institute for Occupational Safety and Health, the American Association for Respiratory Care, or other similarly accepted certification programs. Allows respiratory care practitioners licensed in other jurisdictions to provide respiratory care in this State (i) in a declared emergency in this State, (ii) as a member of an organ procurement team, or (iii) as part of a medical transport team that is transporting a patient into or out of this State. Provides that unlicensed and non-credentialed individuals who deliver respiratory care equipment may deliver, set up, calibrate, and demonstrate the mechanical operation of the device to patients, family, and caregivers if the individuals received training and demonstrated competency using the specific devices under the supervision of a respiratory care practitioner licensed by this State or some other licensed practitioner operating within his or her scope of practice. Provides that patients, family, and caregivers must be taught to use the equipment for the intended clinical application by a licensed respiratory care practitioner or other licensed health care professional operating within his or her scope of practice. Provides that instructions to the patient regarding the clinical use of equipment, patient monitoring, patient assessment, or any other procedure used with the intent of evaluating the effectiveness of the treatment must be performed by a respiratory care practitioner licensed by this State or any other licensed practitioner operating within his or her scope of practice. **(Status – House – Re-referred to Rules Committee - Dead)**

**HB 2404 – Rep. Willis** - Amends the School Code and the Smoke Free Illinois Act. Provides that specified provisions concerning cigarettes apply also to electronic cigarettes. Defines "electronic cigarette" as any electronically actuated device which in operation causes the user to exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation. Permits theater actors to use electronic cigarettes within performance spaces. Defines other terms. **(Status – House – Re-referred to Rules Committee - Dead)**

**HB 2507 – Rep. Martwick** - Amends the Medical Assistance Article of the Illinois Public Aid Code. Provides that smoking cessation products shall not be subject to prior approval as a result of the 4-prescription limit. **(Status – House – Re-referred to Rules Committee -- Dead)**

**HB 3165 - Rep. Burke** - Amends the Critical Health Problems and Comprehensive Health Education Act. Requires instructors training persons on how to properly administer cardiopulmonary resuscitation and how to use an automated external defibrillator to be certified to administer cardiopulmonary resuscitation and use an automated external defibrillator by the American Red Cross, the American Heart Association, or another nationally recognized certifying organization. **(Status – House – Re-referred to Rules Committee - Dead)**

**HB 3212 – Rep. Lilly** - Amends the Health Care Worker Background Check Act. Replaces language prohibiting a health care employer to hire, employ, or retain any individual in a position with duties involving direct care for clients if the individual is convicted of committing

specified offenses with language that allows health care employers to hire, employ, or retain any individual in a position involving direct care for clients, patients, or residents, or access to the living quarters or the financial, medical, or personal records of residents, who has been convicted of committing or attempting to commit specified offenses after specified time periods or within the time periods with a waiver under the Act. Adds 5 members to the Health Care Worker Task Force. Requires the Task Force to issue recommendations to the Department of Public Health, including (i) examining whether the relevant rules must be amended to reflect changes in Illinois law, (ii) determining whether the waiver procedures are effective, and (iii) connecting people with criminal records to employment with work in the health care industry. Requires the Department of Public Health to issue a report regarding waivers. Makes other changes. **(Status – House – Re-referred to Rules Committee - Dead)**

**HB 3362 – Rep. Willis** - Creates the Sale of Flavored Electronic Cigarettes and Flavored Cigarette Liquids Prohibition Act. Creates the offense of unlawful sale of flavored electronic cigarettes or flavored cigarette liquids. Provides that a person commits unlawful sale of flavored electronic cigarettes or flavored cigarette liquids when he or she knowingly sells flavored electronic cigarettes or flavored cigarette liquids, or causes, permits, or procures flavored electronic cigarettes or flavored cigarette liquids to be sold from his or her premises or establishment. Provides that a violation is a Class A misdemeanor. Defines "electronic cigarette", "electronic cigarette liquids", "flavored electronic cigarette", and "flavored cigarette liquids". **(Status – Tabled)**

**HB 3531 – Rep. Golar/Sen. Link** - Provides that it is a violation of the Act for any person to smoke tobacco in any area of a day care center, day care home, or group day care home (removing qualifying language regarding services being provided or children being present). **(Status – Passed Both Houses)**

**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 785 – Sen. Harris, N./Rep. Evans** - Exempts certain health care professionals licensed to practice in another state or country from State licensure requirements if the professional is practicing in the State while under contract to provide services to an athletic team. Defines "athletic team". Limits the services the health care professional may provide. Limits the licensing exemption period to 10 days per sporting event. Authorizes the Secretary of Financial and Professional Regulation to grant one 20-day extension to the exemption period. Provides that an exempt health care professional is not authorized to practice at a health care clinic or facility. Effective September 1, 2015. **(Status – Passed Both Houses)**

**SB 973 – Sen. Althoff/Rep. Tryon** - Amends the Regulatory Sunset Act. Extends the repeal of the Respiratory Care Practice Act from January 1, 2016 to January 1, 2026. Makes changes in provisions regarding definitions, exemptions, restrictions and limitations, powers and duties of the Department of Financial and Professional Regulation, the Respiratory Care Board, examinations, license restoration, grounds for discipline, notice of hearings, transcript of formal hearings, hearing officer proceedings, restoration of suspended or revoked licenses, summary suspension of licenses, administrative review, costs, and the Illinois Administrative Procedure Act. Adds provisions concerning durable medical equipment use and training. Provides that parties involved in disciplinary or other proceedings may enter into negotiated consent orders. **(Status – Passed Both Houses)**

**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 – 2<sup>nd</sup> Reading)**