

*Government Strategy Associates
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MEMORANDUM

To: Brian Lawlor
Matt Kincaid

From: Terry Steczo
Maureen Mulhall

Re: Legislative Report

Date: June 30, 2015

Respiratory Care Sunset Bill Goes to Governor

The ten year extension of the Respiratory Care Practice Act (Senate Bill 973) has been sent to the Governor for his consideration. This is the last step before the bill becomes law and it is of vital importance that as many ISRC members as possible contact him and request his approval. A short note can be sent to Governor Bruce Rauner, 207 State House, Springfield, Illinois 62706. When writing please include the bill number. A simple line or two as to why his approval is important is sufficient. For example, "Senate Bill 973 will enhance health care for Illinois citizens. Your approval would be appreciated."

Even though the Governor has 60 days to act on any legislation forwarded to him any letters and notes should be sent as soon as possible.

On The Brink

The legislature will once again be in its weekly overtime session posture of meeting weekly as the clock ticks toward midnight and the new state fiscal year that will begin without any sign of a new budget in place. Last week the parliamentary hold was removed from the bevy of budget bills that were approved by the Democratic majority and sent to the Governor. To no one's surprise all but two were vetoed. And those two bills, both relating to education funding, were signed in order to make sure schools open on time and prevent the finger of blame from pointing in the Governor's direction if/when a government shutdown occurs. It also means that there is a possibility that the current impasse can drag on and on well into the summer.

Over the past few days there has even been disagreement on what might happen if a shutdown does occur at some time in July. Yesterday the Governor's office released a statement informing state employees everything possible would be done to see that they would be paid even if there was no budget approved. That was followed by a memorandum from the Attorney General

indicating that making any employee payments without a budget would violate the Illinois Constitution. What all this means is that the courts will no doubt be asked to play referee as they have done in previous disputes, such as in 1991, 2007 and 2009.

The Governor's budget bill veto message cited the unconstitutionality of approving a budget that was almost \$4 billion out of balance. That's true, although during the floor debate during the passage of those bills the hope was that there would be discussions with the Governor about creating enough new revenue to balance the spending. The Governor has repeatedly said that he's willing to talk taxes. His own budget plan offered in February was \$2.2 billion short and included deep cuts based on the loss of temporary income tax proceeds. But, he has also firmly indicated that he won't go there until he gets his agenda approved and there has been absolutely no indication that the General Assembly is of the mind to make that happen. Each Tuesday that the legislature is in session during the summer will bring some hope that a compromise can be struck but with the new fiscal year only beginning and no immediate crisis at hand don't expect any movement soon.

Skirmishing

Overtime legislative sessions in Illinois are not unusual and have occurred with some periodic regularity in Illinois. What makes the 2015 version of overtime unlike the others is a Governor who legislators are not familiar with and who has been impossible to "read" as he nears completion of his first six months in office. That and the method each side of the debate has employed to get their message across to Illinoisans.

The big brouhaha revolves around legislative Democrats insistence that creating a workable budget for FY 2016 be the major focus of overtime discussions in contrast to the Governor's insistence that his "Turnaround Agenda" or parts thereof be approved before any budget and revenue discussions take place. Democrats have spent the first month of the overtime session holding hearings and taking votes on their version of the Rauner agenda from a property tax freeze to some business-related reforms. To no one's surprise all have failed. The Governor, on the other hand has traveled the state trying to gin up support for his proposals. In an attempt to try to pry apart the very cohesive Democratic caucuses he has questioned the ethics of the Democratic legislative leadership and has resurrected the age old Democratic Machine in an attempt to make downstate members queasy. While the Democratic Machine mantra that has proven fairly unsuccessful for the last 40 years, mostly because that entity today is only a shadow of its former self, downstate legislators do get somewhat skittish when that accusation is lobbed at them.

The big unknown here is the potential impact of the Governor's decision to air television ads that besmirch Democratic leadership in an attempt to win over the hearts and minds of Illinoisans. He has a pool of \$23 million at his disposal and more if he needs it to try to convince the electorate that his agenda is the right thing to do. Non-campaign season ads by elected officials are unprecedented in Illinois so the Governor is breaking new ground here. While the first rounds of ads aired a few weeks ago were fairly mild, he has threatened to go heavier on the offensive and make issues more personal if the stalemate isn't broken soon and if his agenda gains no legislative traction.

Both sides have shown wills of steel so trying to determine what the end result will be has been impossible. But if the battle of wills gets too out of control and too personal it obviously will

become more and more impossible to find the trust and accommodation that will end in a budget and issue deal in the near future. Governor Rauner would love nothing more than to enact an agenda that business interests have been seeking for decades and couldn't get approved even when the GOP controlled the legislature and governor's office in 1995-96. Democrats are wary because if they give the Governor too much they know he'll come back asking for even more next year. It's a tightrope that even Nick Wallenda might feel uncomfortable walking.

The one thing that is certain is that there will eventually be an agreement. When and how is another matter. One question being pondered is whether or not the millions that is being spent by the Governor to bloody the other side will have "legs" once a deal is on the table and finalized. Polls in other states have suggested that the answer is no, but since this type of battling is new to Illinois we'll just have to wait and see.

The Negotiating Table

Governor Rauner's "Turnaround Agenda" is a fairly comprehensive list of statutory changes, many of which have been on certain wish lists for years and years. The Governor feels the time may be right to enact some or all of them and has indicated that his business acumen and determination will carry the day. Legislative Democrats, on the other hand, are skeptical and have thwarted many of the same initiatives over the years that the Governor is seeking. However, on some of those issues there may be room for some compromise. As the search goes on for what the "end game" may look like who is willing to give what will (and when) will be an important factor. The longer the stalemate goes the more likely it is that the actual negotiating list will be pared down substantially. Since Democrats are pretty much playing defense and have little on the table except for budget issues it appears that it will be how far the Governor is willing to whittle down his list for an actual agreement to be reached. Another potential problem for the Governor in convincing the legislature to go along with his agenda is last week's release of data from the U.S. Bureau of Labor Statistics that shows Illinois as the second highest among all other states in new business creation during the last quarter, trailing only Massachusetts.

Here is a list of what are perceived to be the major issues that will be or are being discussed:

- **Worker's Compensation Reform:** This has been a legislative bargaining issue since the 1970s and reforms have been negotiated a few times since. In an effort to reduce worker's compensation insurance costs for employers the Governor wants clarity on "causation" and some definitions including "traveling employees" and implementation of American Medical Association guidelines on impairment. Democrats argue that they made major concessions in 2011 that were supposed to have reduced worker's compensation insurance rates but, as yet, they haven't materialized and point to the insurance industry. They may be willing to deal here but probably not until they get some answers as to why the previous effort fell way short of expectations. Some changes in "causation" (linking benefits to the cause of an injury) could definitely be an outcome here.
- **Unemployment Compensation Reform:** Another issue that has been at the center of employer/employee debates for years and also have been the subject of many negotiated statutory changes over the years. The Governor's agenda specifies changes that would crack down on fraud and seek better definitions of workplace rules, such as for misconduct. Democrats have signaled that there could be meaningful changes here so if

there is one area where compromise could come it would pertain to unemployment compensation.

- **Tort Reform:** The 10,000 pound gorilla of business "reform" issues. The Governor and business interests feel strongly that there must be a cap on awards and an end to what they consider frivolous lawsuits that hurt the Illinois business climate. They argue that Madison County has long become a haven for the filing of such suits. Democrats are not inclined to limit the rights of those who file such suits and argue that the threat of suits leads to safer products, less medical malpractice and safer workplaces. The legislature did successfully negotiate tort reform changes in the mid-1980s. A tort reform modification also was approved in 2005 over the objections of the Illinois Trial Lawyers Association, a general ally of Democrats. Negotiations are the only way to find a middle ground here but the middle may be impossible to find.
- **Local Empowerment Zones:** Represents the Governor's suggestion for "local control" of union issues, namely Right-To-Work. Illinois is one of 26 states without a Right-To-Work statute. A Right-To-Work law generally prohibits agreements between labor unions and employers that govern the extent to which an established union can require employees' membership, payment of union dues, etc. By pushing for local empowerment or Right-To-Work zones the Governor feels he can secure half a loaf. Democrats, as well as a number of legislative Republicans, argue that Right-To-Work laws diminish the rights in the workplace and tilt the playing field heavily toward management. They also argue that while such laws do not prohibit collective bargaining they do create a class of individuals known as "free riders" - those that benefit from collective bargaining without having to pay for it. When Republicans controlled the House in 1981 a Right-To-Work bill made it to the House floor where it was defeated 25-138-5 on a bipartisan roll call. Many years have passed but legislative attitudes about Right-To-Work have not. This issue will be the stickiest of wickets in any discussions or negotiations.
- **Freezing Property Taxes For Two Years:** One of the Governor's central tax planks. His idea originally was to freeze property taxes permanently, allowing for increases through local referenda. That plan has now been scaled back to a two-year freeze with the referendum option. His argument is that he considers Illinois to be a high property tax state and a freeze would allow both relief and a span of time to consider general tax reform. Opponents argue that, on the whole, Illinois is in the middle of the "tax pack" because other taxes are much lower than other states. They also argue that since many jurisdictions are already tax capped so a freeze on top of that diminishes their ability to provide services, and that even though there is the possibility of a referendum to allow increases the times when referenda are held are so limited and must be planned so far in advance that its usefulness in providing exceptions and budget flexibility is nil.
- **Term Limits:** A focal point of the Governor's election campaign last fall and courts have ruled that only actions by General Assembly to put a constitutional amendment on the ballot will suffice. The Governor has put placement of this question on the 2016 ballot a negotiating point and would limit terms of legislators and state officials to eight years. Opponents, of which there are many, argue that those legislators who feel strongly can volunteer to leave after eight years. They also feel knowledge is power and that removing too many legislators too quickly will diminish very important institutional knowledge and abdicate that to staff and lobbyists. Of the many issues in play there may actually be

room for compromise here. Term limits that exempt current officeholders until they leave has been discussed and have an outside chance to win acceptance. The Anti-Madigan forces who want to find a way to dispatch him as quickly as possible won't be happy but the term limits folks will finally see the light at the end of the tunnel if they can pull this one off.

- **Moving all current state employees to 401(k) type of pension system:** This has also been high up on the priority list for the Governor. With the recent pension decision of the Illinois Supreme Court it may become part of whatever pension reform plan emerges next if there can be a way to show that you can take the employee contributions that would have ordinarily gone to make the current system sound and shift it away without having an implosion. Since the ruling he has stipulated that retirees will be exempt from any pension reforms he proposes. As much as former Governor Quinn touted himself as being put on Earth to solve the pension crisis he had little direct impact on the last reform package other than signing the bill. That won't be true with this Governor who actively try to get his vision of pension reform included in whatever package comes next. The big question is whether or not anyone can agree on anything comprehensive enough that will save the system and that will be acceptable to the Supreme Court.
- **Budget and Revenue:** This is what is all comes down to in the end. The Governor insists that there will be no budget and revenue discussions until he gets an acceptable amount of the issues cited above but that "bottom line" has kept moving for the last few months. The budget presented by the Governor in February was \$2.2 billion in the red while a budget crafted by the legislative Democrats was short by \$3 billion meaning that there has to be some discussion of additional revenue in the mix. The lapsed temporary income tax proceeds amounted to \$3.6 billion so that could have cured the revenue problem had it been left standing. The Governor has proposed expanding services taxes to the tune of \$600 million but that won't solve the problem. There has been some speculation about a reinstatement of the temporary income tax at a lesser rate for a shorter period but none of that will happen until there is some resolution of the above issues or unless a government shutdown causes one side or another to back down.

Session Schedule/Deadline Dates

Here are the relevant upcoming legislative schedule and deadline dates:

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

Legislation of Interest

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 – Sent To Governor)**

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 – Sent To Governor)**

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 – Sent To Governor)**

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)**