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MEMORANDUM

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

Date: August 31, 2016

Governor Approved Asthma Action Plan Legislation

Governor Rauner has approved House Bill 6333, sponsored by Rep. Robyn Gabel and Sen. David Koehler that requires that each school district, public school, charter school, or nonpublic school annually request an asthma action plan from the parents or guardians of a pupil with asthma. It also 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. Locally adopted plans must include all of the components of the State Board's model protocol.

How Low Can You Go?

If it wasn't bad enough that the "stopgap budget" approved at the end of June is/was approximately \$8 billion out of whack and that the state's current bill backlog is expected to reach \$10 billion by the end of the year, then some economic reports and projections released in August by the Commission of Government Forecasting and Accountability (COGFA) should make Illinois decision makers start reaching for Xanax.

The biggest news was the announcement by COGFA that they had revised their FY 2017 revenue estimate downward by over a billion dollars, from \$31.9 billion to \$38.9 billion. If that projection holds then not only is/was the "stopgap budget" underfunded by \$9 billion but any consideration of additional revenues to balance the budget shortfall is going to get much tougher.

But wait ... there's more. There has been some concern from actuaries in the financial sector that state retirement systems, particularly the State Teachers' Retirement System (TRS), have overstated their assumed investment return rate. Obviously, the higher the rate of return the less

reliance on the state to provide the remainder of that year's pension obligation. In 2014, after similar concerns were raised, TRS reduced their assumed investment return rate from 8% to 7.5% and the result was an additional \$200 million in state resources needed to meet the pension obligation that year and since.

Last Friday the TRS trustees met to consider reducing the assumed rate of return lowered even further, to 7% in a move that could cost the state an additional \$400-\$500 million. Governor Rauner tried at the last minute to quell the move but was unsuccessful as ten of thirteen trustees voted to lower the rate.

But wait ... there's even more. There was one glaring defect in the "stopgap budget" and it related to the state's group insurance program. The defect was that there was no appropriation whatsoever to pay claims ... and the bills just keep on mounting. According to COGF, at the end of June health claims held from various insurers totaled roughly \$3.34 billion. Depending on the plan the estimated payment cycle ranged from 314 to 574 days. And, with no budget approved for claims the wait can only get longer.

There is an expectation that with the passage of the "stopgap budget" the stage has been set for some grand bargain to be discussed in the post-election period beginning in November and enacted in January during the waning days of the current session. Yes, it's very logical to assume that will be the case especially with the budget getting to be more and more out of balance every week. But also keep in mind that everything about Illinois government since January, 2015 has defied logic so any prediction about the coming months and any possible resolution to the overall crisis is pure speculation at best.

If there is to be some movement forward then everyone, including the Governor and legislative leaders, must acknowledge to create the environment to take the unbalanced short term spending plan and resolve to make it balanced by the end of the fiscal year, or at least take major steps to do so. But, they will also need the will and the fortitude to actually come together, craft a plan that can take realistic steps toward state solvency and, most importantly, work together to convince enough rank and file legislators to vote for it. Any solution that is meaningful will also be taxing in every sense of the word, and since most legislators are not courageous by nature there will have to be some extremely tough love provided on both sides of the aisle in order to enact a bipartisan solution, if one is actually achievable.

Governor Completes Review of Legislation

August 28 was the deadline for gubernatorial action on bills approved by the General Assembly during the spring session. According to the Constitution, from the day a bill receives final action in the legislature it must be presented to the Governor within 30 days. During that period of time the Speaker and Senate President must ascertain and verify that the legislation met all constitutional and statutory requirements during the course of the legislative process.

Once legislation is presented to the Governor there is a window of 60 days for review and final action. Unlike the federal Constitution that allows the President to "pocket veto" a bill by letting the deadline pass, Illinois requirements are just the opposite. The Illinois Constitution provides that if the Governor does not act the bill in question becomes law automatically. Since the enactment of the Illinois Constitution in 1970 this has occurred only once or twice.

At the end of the spring legislative session there were a total of 449 bills sent to the Governor for his consideration. Of that number the Governor approved 409 (91%); 30 (6.6%) were vetoed; and he amended another 10 (2.2%). One of the vetoed bills was overridden just prior to the end of the spring session.

The legislature is scheduled to meet during the weeks before and after Thanksgiving for their annual veto session. If the past is any predictor of future action the prospect for any override of gubernatorial vetoes looks pretty weak. During 2015 the Governor vetoed or amended 65 bills. Only one was overridden, and that one instance was with the Governor's blessing. Even though Democrats have so-called veto proof majorities in both legislative chambers those numbers work only on paper. House Democrats have the three-fifths "veto proof" majority with no votes to spare and on any given day one to three of their members vote to the contrary thereby making "veto proof" in that chamber meaningless.

Second Time Not A Charm

For the second time in two tries proponents of redistricting reform have been thwarted in their efforts to have their "fair map" constitutional question placed on the ballot in November. This time by the Illinois Supreme Court. A circuit court judge recently found that six of the seven objections filed to the proposed ballot question to be outside the boundaries of what is permissible. The final action of the Supreme Court then should not have come as a surprise. What was surprising, however, was the closeness of the 4-3 Supreme Court vote and some of the rhetoric used in the opinions.

The Court justices pretty much all agree that it's possible to create a referendum question that can meet constitutional muster but, at least according to the majority, it requires a specific legal precision that no one yet has found a satisfactory answer to ... like threading a needle, or better yet finding a needle in a haystack.

According the majority opinion any tinkering with the redistricting process must exclusively deal with the Legislative Article of the Constitution and nothing else. The "fair mappers" brought the Auditor General into the mix and gave that office a specific function in the process, as well as a supreme court justice from each party. Since both are not mentioned in the Legislative Article it was considered overreaching by the majority. Prior to the announcement of the decision last week there was considerable "subtle" public pressure being place on justices by proponents reminding them in ads and press conferences that over 500,000 individuals signed petitions to qualify the question for November's ballot. The majority's answer to these attempts to sway was contained in a line that said their role "does not requires us to read between the lines of every proposal in an attempt to discern the propriety of the proponent's underlying intentions; our role is solely to determine whether the proposal comports with the strict limitations set forth in Article XIV, section 3."

The minority opinions concluded that adding the Auditor General to the redistricting process did not inhibit the performance of other duties as prescribed in the Constitution. Additionally, they argued that the new process outlined in the "Fair Map" proposal would not hinder the capability of the General Assembly to pass legislation or otherwise perform its duties.

Because justices on both sides in this decision have ruled that there could be an acceptable plan devised probably gives hope to the "Fair Map" coalition to go back to the drawing boards and

give it another try, unless they convince the General Assembly to qualify a question for the ballot which is unlikely.

It will be interesting to see what happens to the fair map coalition should Governor Rauner be reelected in 2018 and they are unsuccessful before then in getting a remap question qualified for the ballot. It's plain that the whole question of redistricting reform is being pushed primarily by Republicans because of the Democratic stronghold on legislative seats. In other states where the shoe is on the other foot it's Democrats who call for fair maps. The current maps in Illinois are in place because one party, Democrats, controlled both the General Assembly and the Governor's Office in 2011, the redistricting year, for the first time since the Constitution was ratified in 1970. If Rauner is reelected the GOP will have a 50/50 chance to control the remap process going into the 2022 elections because of the current tiebreaker provision in the Constitution. In that case a "fair map" would give them no control. Decisions, decisions.

Illinois citizens, however, will get a chance to vote on a constitutional amendment; one that will prohibit the diversion of monies from the Road Fund to the state General Revenue Fund. Revenue on the Road Fund is derived from gas taxes, registration fees and other similar sources. State law specifies that Road Fund expenditures be used specifically for road and other transportation purposes. Notwithstanding the state law the legislature has, for years, made a habit of tapping the Road Fund for general purposes and it has piqued many who look at monies in the Fund as sacred. Finally fed up with past diversions Road Fund proponents have succeeded in proposing constitutional amendment language that would make the Fund untouchable from encroachment. That's good news for proponents. The bad news is that it puts even more pressure on the state's General Revenue Fund and potentially adds another shovel full to the deficit hole.

Legislative Transition

Sen. Matt Murphy (R-Palatine) has resigned effective September 15.

Session Schedule/Deadline Dates

Here are relevant dates for the 2016 legislative session:

- November 15, 16, 17 - 1st Fall Veto Session week
- November 29, 30, December 1 - 2nd Veto Session week
- Early January Session - TBA
- January 11 – 99th General Assembly Ends