

Item #10:
Village Clerk Schultheis
Legislative Updates

ALERT

June 5, 2012

Local Government: Spring 2012 Illinois Legislative Update

Peter M. Friedman
Stewart J. Weiss

The 2012 legislative session for the 97th Illinois General Assembly closed on May 31, 2012. While the general assembly's inability to adopt a comprehensive pension reform package indicates that an "overtime" session later this summer is likely, a number of bills that impact municipalities and local governments were passed by both houses and will be sent to Governor Quinn for signature.

The following is a list of bills related to local government issues:

HB0222 – Illinois Transparency and Accountability Portal to Include Salary Information for County, Township and Municipal Employees

This bill requires that counties, townships and municipalities provide the State of Illinois Department of Central Management Services with information for all employees including position title, current pay rate and year-to-date pay. This information will be posted online in a searchable database available through the Illinois Transparency and Accountability Portal (ITAP). This bill preempts home rule authority.

If this bill is signed by Governor Quinn, it will become effective January 1, 2013.

HB3859 – Tax Revenue Sharing Agreements Must Be Reported to Department of Revenue

This bill requires counties and municipalities to submit an electronic report to the Department of Revenue no later than 30 days after entering into an agreement with a business to share or rebate portions of retailer's occupation taxes generated by the business' sale of tangible personal property. These reports must contain the (i) names of the parties; (ii) the location(s) of the business within the county or municipality; (iii) whether the business maintains other places of business outside the county or municipality; (iv) the terms of the agreement, including (a) the manner and duration of the rebate/sharing arrangement, and (b) the name of any business not party to the agreement that will receive a share of the taxes; and (v) a copy of the agreement. In addition, counties and municipalities are required to submit reports to the Department of Revenue for all such agreements currently in effect no later than 90 days after the bill's effective date.



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The Department of Revenue will be required to post all reports, with the exception of the agreements themselves, on its website within six months after the bill's effective date. Finally, this bill provides that the following information in the required reports and agreements is exempt under the Freedom of Information Act (FOIA): sales figures; the amount of sales tax collected; and the amount of sales tax rebated prior to the effective date of the bill. Although this bill does not contain a specific home rule authority preemption, it amends provisions of the Counties Code and the Municipal Code that specifically preempt home rule authority.

If this bill is signed by Governor Quinn, it will become effective January 1, 2013.

HB4596 – FOIA Exemption for Certain Law Enforcement Records

This bill adds to the list of permitted exemptions from disclosure under the Freedom of Information Act "law enforcement records" that (i) a public body has access to solely because the records reside on a shared electronic management system and (ii) the public body did not have any role in the creation or underlying events related to the records.

If this bill is signed by Governor Quinn, it will become effective immediately.

HB4601 – Counties and Municipalities Required to Name Purchasing Agent on Audit Reports

This bill requires that a county or a municipality include the name of its purchasing agent, or if the county or municipality has not designated a purchasing agent, the name of the person who is responsible for overseeing all competitively bid contacts, on all audit reports required to be submitted to the state comptroller's office.

If this bill is signed by Governor Quinn, it will become effective immediately.

HB4687 – Content and Notice of Agendas for Public Meetings

This bill amends the Open Meetings Act to require that agendas for public meetings include a description of "the general subject matter" of any resolution or ordinance that will be the subject of final action (a vote) at that public meeting. The bill also requires that a public body must make the notice and agenda for a public meeting continuously available to the public during the entire 48-hour period before a meeting. Posting the notice and agenda of the public meeting on the public body's website will satisfy the continuous posting requirement. If a public body does not maintain a website, it will need to ensure that at least one copy of the agenda is continuously accessible by the public during the full 48 hours prior to a meeting.

If this bill is signed by Governor Quinn, it will become effective January 1, 2013.

HB4715 – Examination of Firefighter Applicants

This bill allows physical examinations of firefighter candidates to be based on tests approved by the Joint Labor-Management Committee of the State Fire Marshall as an alternative to the industry standards currently used. This bill also provides that a passing score on the written examination is one that equals or exceeds the median score. Currently, the mean (average score) is used as the minimum passing score. Finally, this bill changes some requirements concerning the allocation of preference points and the placement of firefighter candidates on the final eligibility register.

If this bill is signed by Governor Quinn, it will become effective immediately.

HB4988 – Authorizing Municipalities to Immobilize Vehicles for Failure to Pay Motor Vehicle Tax

This bill amends the Illinois Vehicle Code to authorize all municipalities to immobilize (i.e., "boot") vehicles registered to persons who have failed to pay final determinations of motor vehicle tax liability. The bill requires municipalities to put into place a process for prior notification to the

registered owner of the impending immobilization of the vehicle, a hearing after a vehicle has been immobilized, and notice after the vehicle has been immobilized and towed.

If this bill is signed by Governor Quinn, it will become effective immediately.

HB5212 – Notification of Changes in Prevailing Wage Rates

This bill amends the Prevailing Wage Act to relieve public bodies and their contractors of the obligation of actively notifying contractors and subcontractors each time the Department of Labor revises the prevailing rate of hourly wages for a particular labor category. Instead, this bill provides that public bodies and their contractors may satisfy the Act's notification requirement by including a stipulation in all contracts stating that the Department of Labor may revise the prevailing wage rate from time to time and that these revisions are posted on the department's official website (<http://www.state.il.us/agency/idol/>).

If this bill is signed by Governor Quinn, it will become effective January 1, 2013.

SB0409 – Notice and Hearing Requirements for Special Service Areas

This bill amends the Special Service Area Tax Law's notice and hearing requirements. First, it requires that the notice of hearing for the establishment of a special service area include the proposed amount of the tax levy for special services for the initial year of the special service area. Second, it requires that the public hearing on the establishment of the special service area be held no later than 60 days after adoption of the ordinance proposing the special service area. Finally, the bill inserts a new provision requiring the public body that established a special service area to notice and hold a public hearing in any year in which the estimated special service tax levy exceeds by 5 percent or more the amount extended in the preceding levy year.

If this bill is signed by Governor Quinn, it will become effective January 1, 2013.

SB3508 – Counties and Municipalities Required to Submit Audit Reports to Comptroller in Electronic Format; Fines

This bill requires counties and municipalities to submit annual audit reports to the state comptroller's office electronically unless a county or municipality can provide sufficient evidence that electronic filing is not possible. The comptroller is then required to post the audit reports online for public viewing no later than 45 days after they are filed. This bill also authorizes the comptroller to charge counties and municipalities daily cumulative fees for late filings. This bill preempts home rule authority.

If this bill is signed by Governor Quinn, it will become effective immediately.

SB3518 – Counties and Municipalities May Not Prohibit Charitable Solicitation by Public Safety Personnel

This bill bars counties and municipalities from prohibiting solicitation by public safety personnel for charitable organizations. The bill states that counties and municipalities must allow their law enforcement personnel, firefighters or other persons "employed to protect the public safety" to solicit for a charitable organization so long as the organization files an application, no less than 10 days prior to the initiation of the solicitation, which describes the dates, locations and manner of the solicitation along with valid proof of \$1 million in liability insurance covering the solicitation activities. Counties and municipalities must approve a complete and valid application no later than five business days after filing but may impose reasonable conditions on the solicitation activity based on public safety concerns. This bill preempts home rule authority.

If this bill is signed by Governor Quinn, it will become effective immediately.

Unpassed Bills

The general assembly failed to send the following bills to the governor. However, there is a possibility that some of these bills could be passed in an extended summer session:

HB3637 – CPPRT Diversions for Teachers' Pensions

This bill, as amended, would have diverted up to \$1,401,377,760 from the Corporate Personal Property Tax Replacement Funds (CPPRT) from local governments to pay for the state's contribution to the Teacher's Retirement System. This bill was held after its second reading and did not pass out of the House.

HB5078 – Ability of County Elected Officials to Hold Concurrent Offices

This bill was introduced in the House as a simple amendment to the Illinois Municipal Code to allow a mayor, president, alderman, trustee, clerk or treasurer of a municipality to concurrently serve as the municipality's budget officer. However, the Senate completely rewrote HB5078 to amend the Public Officer Prohibited Activities Act provisions regarding the ability of elected county officials to concurrently hold other public offices. The amendments specifically allow elected county officials to concurrently serve as mayors, board presidents, alderman or trustees of municipalities on the condition that the elected official would be prohibited from "acting, voting, sponsoring, discussing, or participating in any way" in the consideration of contracts or agreements between the county and the municipality in which a conflict of interest might arise. The bill, as amended, was passed by the Senate and sent back to the House for concurrence with the Senate's amendments. The House failed to approve concurrence on all of the amendments before the end of the session.

SB2643 – Prevailing Wage Act Requiring All Contractors and Subcontractors to Satisfy "Responsible Bidder Requirements" of Illinois Procurement Code

This bill, which was passed by the Senate and given a second reading in the House, would amend the Prevailing Wage Act to require that all contractors and subcontractors on public works projects satisfy the requirements for a "responsible bidder" set forth in Section 30-22 of the Illinois Procurement Code (30 ILCS 500/30-22), including participation in a U.S. Department of Labor approved and registered apprenticeship and training program. The House further amended this bill to require bidders to submit an estimate of the total number of straight-time work hours to be performed by minorities and females for each category of labor required to complete the public work. The bill was referred to the Rules Committee at the end of the legislative session.

SB2862 – Limit on Property Tax Limitation

This bill sought to amend the Property Tax Extension Limitation Law (PTELL) to restrict a taxing entity's permitted property tax extension limit to 0 percent (no increase), or an amount approved by referendum, in the event that the aggregate equalized assessed value of all of the property in the taxing district has decreased since the previous year's levy. This bill was referred first to the Senate's Revenue Committee and then sent back to the Assignments Committee. The bill was never called for a vote.

In the event of a summer "overtime" legislative session, we will continue to monitor these bills.

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About Our Local Government Practice

Holland & Knight's Chicago office has an extensive practice in state and local government law and related land use and environmental law, real estate and litigation. We currently serve as general counsel to numerous municipalities and other local governments, and as general or special counsel to a number of state, regional and local government agencies in Illinois and throughout the United States. In addition to our ongoing representation of local governments in a general counsel capacity, we regularly represent federal, state and local agencies across the United States in connection with various special assignments.

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To ensure compliance with Treasury Regulations (31 CFR Part 10, §10.35), we inform you that any tax advice contained in this correspondence was not intended or written by us to be used, and cannot be used by you or anyone else, for the purpose of avoiding penalties imposed by the Internal Revenue Code.

Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.

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Peter Friedman - Chicago

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David Lothspeich

From: IML Legislation [Legislation@iml.org]
To:
Cc:
Subject: IML Statehouse Briefing - June 15, 2012
Attachments:

Sent: Fri 6/15/2012 10:04 AM

IML Statehouse Briefing



On the ground news and insider information!

June 15, 2012

Bills to Governor: The IML Legislative Team has [identified over 90 bills](#) that passed both chambers and are of interest to municipal governments. The bills are arranged by issue category. Each category includes a summary of activity.

Medicaid Reform Enacted: Governor Quinn [signed several Medicaid reform bills into law](#). The bills are estimated to provide close to \$2.7 billion in Medicaid costs relief.

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Two bills passed the General Assembly concerning FOIA and the Open Meetings Act. House Bill 4687 sets forth requirements for meeting notices under the Open Meetings Act. The IML, along with the Illinois Clerks Association and other groups, were able to negotiate out some of the more onerous provisions of the initial bill and come to a workable standard. House Bill 4596 amends FOIA concerning law-enforcement records. The original bill, as introduced, would have closed the loophole in FOIA that allows the law to interfere with investigations or prosecutions. Unfortunately, the bill was significantly watered down. The bill now states that police records from another public body that are in a shared electronic records management system to which the municipality has access do not become records of the municipality by virtue of that access.

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- **[HB 4596 - FOIA-INTERFERENCE WITH LAW ENFORCEMENT](#)**

There is a flaw in FOIA that provides that FOIA may be used to interfere with an ongoing investigation, prosecution, or other law-enforcement proceeding--if that investigation, etc. is conducted by an agency other than the public body that receives the request. For example, if a city receives a request for police records, it may not rely on the law-enforcement exemption based on the fact that the disclosure would interfere with a State Police investigation. House Bill 4596 nibbles around the edges of the problem by providing that records in a shared electronic records management system to which the public body has access do not become the public records of the public body. While this is a small improvement over the existing system, it does not solve the underlying problem that FOIA could be used to stymie an investigation or prosecution. The bottom line is that FOIA should not be used as tool to interfere with an investigation, prosecution, or other proceeding--regardless of who has the piece of paper in their possession.
- **[HB 4687 - OPEN MEETINGS-AGENDAS/NOTICES](#)**

IML initially opposed this bill because of the requirement that the agenda be "sufficiently descriptive" to give reasonable notice of anything that could be considered or the subject of final action at a meeting. That original language was overly ambiguous and conflicted with other provisions of the Open Meetings Act. The result would have been uncertainty about the law and the inevitable lawsuits that would soon follow. After discussions with the sponsors and other interested parties, we were able to come to an agreed solution with Senate Amendment No. 1, which requires that the agenda set forth the general subject matter of anything that will be the subject of final action at a meeting. That amendment leads to a workable standard for public bodies while helping ensure that the public will have the necessary advance notice of actions to be taken by the government. With Senate Amendment No. 1, the IML has removed its opposition.

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This page contains a list of categories that include the bills that were approved by the General Assembly. The IML has identified 96 bills that either affect, or are of interest to, municipal governments. Throughout the summer months, the Governor will be taking action on these bills by either approving the legislation or sending it back to the General Assembly following a veto or amendatory veto.

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Most notably, the General Assembly passed SB 3616 to modernize Enterprise Zones. Among the changes in that bill are: the extension of existing enterprise zones by 25 years, the addition of five new zones over the next 20 years, and the elimination of certain tax incentives. Additionally, legislation was introduced in both chambers to place additional restriction on TIF procedures. Neither of those bills were called to a vote before the General Assembly adjourned in May. We expect, however, that these issues will resurface.

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- [HB 4445 - SE IL ECONOMIC DEVELOPMENT BD](#) This bill expands the membership of the Southeastern Illinois Economic Development Authority from 10 to 27 members. The bill also specifies that the Governor receives 9 appointments and the county chairmen receive 17. The bill also addresses new quorum and voting requirements, successor appointments, and the removal of members.
- [SB 0548 - TIF DISTRICT-EAST PEORIA](#) The bill extends enterprise zones in East Peoria and Carlyle.
- [SB 3277 - TIF-VILLAGE OF GLENWOOD](#) TIF extension for the Village of Glenwood.
- [SB 3616 - ENTERPRISE ZONE REFORM](#) **Support**
This bill extends enterprise zones by 25 years and institutes a mandatory performance review at the mid-point. The bill introduces competition into the Enterprise Zone Program by establishing specific qualification criteria. Increases the number of enterprise zones by adding five new zones over the next two decades to the current 97. The bill also eliminates tax incentives deemed unnecessary to the core mission of enterprise zones. The bill requires that companies benefitting from enterprise zones report their tax incentive information to the Department of Revenue. The bill requires contractors and subcontractors working within enterprise zone projects to get a certification from the Department of Revenue to ensure that the sales tax exemption certificate is being used appropriately.

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A number of revenue bills affect municipalities. Among these are: SB 409, which adds additional notice and hearing requirements for special services areas; HB 3859, which requires municipalities to file reports concerning sales-tax-rebate agreements; and HB 222, which requires the municipality to report employee information to CMS for inclusion in the ITAP database.

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- **[HB 0222 - CMS-ACCOUNTABILITY PORTAL](#)**

This bill provides that the Illinois Transparency and Accountability Portal (ITAP) shall also include a searchable database of all county, township, and municipal employees, sorted by the employing unit of local government, employment position title, and current pay rate and year-to-date pay. The bill requires counties, townships, and municipalities to comply with the requirements established by the Department of Central Management Services concerning ITAP. Limits home rule powers.
- **[HB 3129 - WIRELESS 9-1-1 SURCHARGE](#)**

This bill makes changes to the State's collection and administration of the Prepaid Wireless 9-1-1 Surcharge with respect to payments made to the City of Chicago.
- **[HB 3859 - MUNI/COUNTIES CD-TAX SHARING](#)**

This bill requires municipalities to file reports with the Department of Revenue concerning tax-rebate agreements. The reports will be posted in the Department's website. Certain taxpayer information is exempt from FOIA.
- **[HB 4242 - NATURAL DISASTER HOMESTEAD EXEMPTION](#)**

This bill provides a homestead exemption from property tax where a residence is destroyed by a natural disaster. The amount of the exemption is the EAV of the rebuilt property after it is rebuilt minus the EAV of the property before it was destroyed.
- **[HB 4314 - UTILITY TAXES-BUSINESS EXEMPTIONS](#)**

This bill extends the time period from 36 months to 48 months by which a business entity must certify the location of 300 full-time equivalent jobs in order to be eligible for an exemption from the additional charges added to the business enterprise's utility bills as a pass-on of the municipal and State utility taxes.
- **[HB 4601 - PURCHASING AGENTS](#)**

This bill makes numerous changes with respect to State spending and procurement records. With respect to local governments, it amends the Governmental Account Audit Act, the Counties Code, and the Illinois Municipal Code to require that any financial report of a governmental unit under the jurisdiction of one of those Acts must include the name of the "purchasing agent" who oversees all competitively bid contracts for that unit.
- **[HB 5192 - TAX TRIBUNAL](#)**

This bill creates the Illinois Independent Tax Tribunal, which has original jurisdiction over the hearing and determination of questions of law and fact arising from certain tax decisions of the Department of Revenue. This does not cover property tax issues and is limited to matters where the tax liability exceeds \$15,000.
- **[HB 5283 - IFA-BRUSH TRUCK LOAN](#)**

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- Allows the fire truck revolving loan program to be used to purchase brush trucks (which are used to fight brush fires).
- **HB 5362 - USE OF SALES-TAX PROCEEDS**  **Support**
Extends the time limit by which a non-home rule municipality may, until December 31, 2020 (now, December 31, 2015), use the proceeds of its sales taxes for expenditure on municipal operations from 2015 to 2020 (in addition to or in lieu of any expenditure on public infrastructure or for property tax relief). This applies only to taxes approved by a referendum after July 14, 2010.
- **HB 5495 - PRUDENT INVESTOR RULE FOR DEFERRED COMPENSATION PLANS** 
This legislation amends the Counties Code and Illinois Municipal Code to provide that beginning January 1, 2015, if a county or municipality offers a 457(b) plan, then that county or municipality, and the persons acting under its authority, must act in accordance with the prudent investor rule when making plan-related decisions. The bill also limits the concurrent exercise of home rule powers.
- **SB 0409 - SSA PROCEDURES** 
This bill sets additional notice and hearing procedures for Special Service Areas. The legislation requires (i) that the notice of the Special Service Area provide an estimated amount of the first year levy under the SSA; (ii) that there be at least 60 days between the adoption of the SSA ordinance and the public hearing; and (iii) that the public body hold an additional public hearing if the amount of the SSA levy in any year exceeds the levy of the prior year by more than 5%.
- **SB 0549 - METRO EAST POLICE DIST** 
This bill creates the Metro East Police District, which is comprised of certain communities from the Metro East Region for the purpose of advancing public safety and law enforcement for the residents of the District. To fund the District, a county may adopt a mandatory fine of \$100 to be paid by the defendant upon a judgment of guilty or a grant of supervision for any felony or violation of Section 11-501 of the Illinois Vehicle Code. Additionally, a municipality in the District may use TIF proceeds for law-enforcement purposes.
- **SB 3314 - PTELL REFERENDA-INFORMATION** 
Requires certain information concerning equalization factors to be included with respect to referenda questions under PTELL.
- **SB 3373 - IFA-FIRE AND AMBULANCE LOANS** 
Includes the Illinois Finance Authority in the operation of various fire equipment revolving-loan programs and makes changes to the operations of those programs.
- **SB 3450 - VIDEO GAMING-INVESTIGATORS** 
This bill gives the Illinois Gaming Board the authority to appoint investigators with respect to video gaming.
- **SB 3508 - AUDIT REPORTS TO COMPTROLLER** 
Requires that reports to the State Comptroller be submitted electronically and requires the Comptroller to post the records on the Comptroller's website within 45 days. The Legislation contains penalties for delinquent reports and preempts home rule authority. (Same as HB 5044).
- **SB 3607 - PROPERTY TAX COMPLAINTS** 
Requires that complaints affecting the assessment of property must be filed on or before 30 calendar days after the date of publication of the assessment list.
- **SB 3802 - BUDGET IMPLEMENTATION** 
Creates the FY2013 Budget Implementation (Supplemental) Act. Amends various Acts to make changes in State programs that are necessary to implement the Governor's fiscal year 2013 budget recommendations. Of particular concern to municipalities is the diversion of \$12 million in Corporate Personal Property Replacement Tax (CPPRT) revenue to fund costs associated with regional superintendents of education. The cumulative statewide loss of municipal revenue is \$2.4 million from the diversion. The bill also authorizes money in the Traffic and Criminal Conviction Surcharge Fund to be used for the operations of the State Police. The Fund is used to provide funding for the Law Enforcement Training Standards Board, but this year's budget sweeps about \$9.3 million from that Fund for State Police.

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