



ILLINOIS STATE  
BAR ASSOCIATION

# STANDING COMMITTEE ON GOVERNMENT LAWYERS

*The newsletter of the ISBA's Standing Committee on Government Lawyers*

## Committee on Government Lawyers presents CLE seminar

By Nancy Easum, Springfield

**O**n March 7, 2005, the Committee on Government Lawyers (CGL) sponsored the seminar, "Basics of the Legislative Process." The four-hour program was held at the recently opened Lincoln Presidential Library in Springfield. In addition to touring the new library, the attendees heard presentations on negotiating the legislative process, utilizing the

General Assembly's Web site, and researching legislative history. The rule-making responsibilities of the Joint Committee on Administrative Rules were also explained. The presenters included the ISBA's own Jim Covington, Director of Legislative Affairs, and Professor Mark Wojcik of John Marshall Law School. Lynn Patton, a member of the CGL, and Chief of the Opinions

Bureau of the Attorney General's Office, discussed the process for requesting an opinion from the Attorney General's Office as well as the precedential value of such opinions. Attendees had an opportunity to ask questions of the speakers before adjourning to a reception cosponsored by the CGL and the Government Bar Association that honored senior government lawyers.

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**See page 12 for details**

## ISBA recognizes senior government lawyers

**F**ollowing the Committee on Government Lawyers' CLE presentation "Basics of the

Legislative Process" on March 7, 2005, the committee hosted a networking reception in Springfield to honor nine Senior Government Lawyers for their years of service—to government and to the bar. We applaud each of our honorees for their dedication.

**Cheryl Cesario** was the General Counsel for the Illinois Department of Children and Family Services from 1995 to 2003. Prior to that, she served as an Assistant State's Attorney in Cook County. Now with the John Marshall Law School as Assistant Director for the Center for Advocacy and Dispute Resolution, Cheryl is a long-time ISBA member. *[Editors' note: Ms. Cesario was recently selected as an associate judge for the Circuit Court of Cook County. She will be sworn into office on June 1, 2005.]*

**James W. Chipman** serves as the

Executive Director and Legal Counsel for the State of Illinois Property Tax Appeal Board. He has been a government attorney since 1982. He is past chair of the ISBA State and Local Taxation Section Council, a member of the ISBA Administrative Law Section Council, and a Illinois Bar Foundation fellow.

**Nancy G. Easum** is with the Illinois State Police, currently serving as a supervisor in the Alcohol and Substance Abuse Testing Section. She also served as Special Counsel to the Director of the State Police. She previously worked in the Secretary of State's office as Deputy Director of the Department of Administrative Hearings and for the State's Attorney's Office.

**Frank J. Kopecky** is with the Center for Legal Studies at the University of Illinois-Springfield and is former Chief

### IN THIS ISSUE

- Committee on Government Lawyers presents CLE seminar ..... 1
- ISBA recognizes senior government lawyers ..... 1
- *Price v. State of Illinois*: complaint against State's Attorney must go to Court of Claims ..... 2
- Public defender liability ..... 3
- Government lawyers loan forgiveness legislation struggles to find support ..... 3
- Legislation preview ..... 4

Counsel of the Illinois Department of Child Family Services. He began his career with the Office of Economic Opportunity, Legal Services. He has been a government attorney since 1968.

**Arden J. Lang** is an Assistant Defender with the Office of the State Appellate Defender, serving as the Deputy Defender this year. She also serves as President of the Government Bar Association. She has been involved with the GBA since its inception.

**Marc C. Loro** is with the Office of

the Secretary of State, Department of Administrative Hearings. He also served as an Assistant State's Attorney in McLean County. A member of the ISBA since 1977, Marc is a former chair of the ISBA Standing Committee on Government Lawyers.

**Joseph Michael Mathis, Jr.**, served as the Commissioner of the Illinois Court of Claims until last year, serving as staff counsel prior to that. He has been an ISBA member since 1983.

**Charles Prorok** began his work with

the Winnebago County State's Attorney's Office in 1978. He was named chief of the civil division in 1985 and currently serves as Deputy State's Attorney for Winnebago County.

**Anita Williams** recently retired from the Illinois Department of Human Services where she served as Assistant General Counsel. She also served as Assistant General Counsel at the Illinois Department of Public Aid. She has published many romantic suspense and mystery novels.

## *Price v. State of Illinois*: complaint against State's Attorney must go to Court of Claims

By Galen T. Caldwell, Chicago

In *Price v. State of Illinois*, 354 Ill. App. 3d 90, 820 N.E.2d 104, 289 Ill. Dec. 596 (2004), the appellate court held that because a State's Attorney is a State employee who was acting within the scope of his employment during a sentencing hearing, the circuit courts lack subject matter jurisdiction to hear actions brought against the State's Attorney and related vicarious liability claims against the State of Illinois arising from acts performed within the scope of the State's Attorney's employment. Rather, such claims must be heard in the Court of Claims.

In *Price*, the plaintiff filed a complaint in the circuit court alleging that he had been convicted of committing theft by deception, a class 2 felony under Illinois law. The plaintiff filed a tort action in the circuit court against the Cook County State's Attorney and the State of Illinois alleging that the State's Attorney misrepresented the offense as a class 1 felony, thus causing the plaintiff to receive a sentence in excess of the statutory maximum allowed for the offense. The circuit court dismissed the plaintiff's cause of action ruling: (1) that it lacked subject matter jurisdiction over the claims; and (2) that the cause of action must be brought in the Court of Claims.

On appeal, the First District Appellate Court affirmed the circuit court's ruling. The appellate court acknowledged that section 8(d) of the

Illinois Court of Claims Act (705 ILCS 505/8(d) (West 1994)) establishes exclusive jurisdiction over tort claims against the State within the Court of Claims. The court also noted the "formal designation" by the parties is not determinative if claims are against the State. The court must analyze an employee's acts under the three-part test set forth by the Illinois Supreme Court in *Healy v. Vaupel*, 133 Ill. 2d 295, 309 (1990), to determine if claims are against the State.<sup>1</sup> If an employee was acting in the scope of his or her employment, the cause of action is against the State, and only nominally against the employee.

The First District answered the threshold question of whether the State's Attorney is an employee of the State or of the county by reviewing the holding in *Sneed v. Howell*, 306 Ill. App. 3d 1149 (5th Dist. 1999). In *Sneed*, the Fifth District Appellate Court affirmed the circuit court's dismissal of a tort action brought against the Jefferson County State's Attorney after applying the *Healy* test. The Fifth District determined that the Jefferson County State's Attorney was an employee of the State rather than the county; therefore, the circuit court lacked subject matter jurisdiction over the claims.

The Fifth District acknowledged the Illinois Supreme Court's holding in *Hoyne v. Danisch*, 264 Ill. 467 (1914). In *Hoyne*, the Illinois Supreme Court

held that the 1870 Illinois Constitution established State's Attorneys as State employees. In 1990, the Illinois Supreme Court again held State's Attorneys were State employees in *Ingemunson v. Hedges*, 133 Ill. 2d 364 (1990). In *Ingemunson*, the Supreme Court noted that the drafters of the 1970 Constitution and the debates of Sixth Illinois Constitutional Convention embraced the decision in *Hoyne* classifying State's Attorney as employees of the State.

The *Price* court adopted the holding in *Sneed* and held that the Cook County State's Attorney was a State employee acting within the scope of his employment. Accordingly, the appellate court affirmed the circuit court's dismissal of the plaintiff's cause of action based upon lack of subject matter jurisdiction and affirmed the ruling that the cause of action must be heard in the Court of Claims.

<sup>1</sup> *Healy* criteria: "When 'there are (1) no allegations that an agent or employee of the State acted beyond the scope of his authority through acts; (2) the duty alleged to have been breached was not owed to the public generally independent of the fact of State employment; and (3) where the complained-of actions involve matters ordinarily within that employee's normal and official functions of the State, then the cause of action is only nominally against the employee.'" *Healy*, 133 Ill.2d at 309, quoting *Robb v. Sutton*, 147 Ill. App. 3d 710, 716 (1986).

## Public defender liability

By Patrick J. Hughes, Springfield

In December 2000, the Illinois Supreme Court affirmed that sovereign immunity does not bar an action against the attorneys of the Cook County Public Defender's Office for negligence allegedly committed in the course of representing an indigent criminal defendant, pursuant to an appointment by the circuit court. *Johnson v. Halloran*, 194 Ill. 2d 493, 742 N.E.2d 741, 252 Ill. Dec. 203 (2000).

In the underlying case, Richard Johnson was convicted of aggravated criminal sexual assault and was sentenced to 30 years in prison. Subsequently, in the course of post-

conviction proceedings, DNA tests which exonerated Johnson were performed, and his conviction was vacated. Johnson brought suit against the assistant public defender who had handled his case, alleging legal malpractice based on his defense counsel's failure to make use of the results of the tests of foreign body fluids found on the victim.

In its opinion, the Illinois Supreme Court took note of the General Assembly's subsequent enactment of the Public and Appellate Defender Immunity Act (see Public Act 91-877, effective June 30, 2000, codified at 745 ILCS 19/1 *et seq.* (West 2002)),

but concluded that the Act did not bar Johnson's claim. Moreover, the court found that the office of the public defender is a county office rather than an agency of the State. Thus, public defenders are not entitled to sovereign immunity from legal malpractice claims.

In June 2004, Johnson's negligence suit went to trial before a Cook County jury. After a two-week trial, the jury returned a verdict in favor of the defendant. Again, it should be noted that the negligence that was the subject of the suit occurred prior to the enactment of the Public and Appellate Defender Immunity Act.

## Government lawyers loan forgiveness legislation struggles to find support

By Paul Logli, Rockford and Marc Loro, Springfield

The current version of the Prosecutors and Defenders Incentive Act, a government lawyer loan forgiveness bill, was introduced in the 109th session of the U.S. Congress by Representative David Scott of Georgia. The bill has 16 cosponsors, but currently none from Illinois. On February 9, 2005, the bill was referred to the House Subcommittee on 21st Century Competitiveness. Paul Logli, State's Attorney of Winnebago County and President-Elect of the National District Attorney's Association (NDAA), was recently interviewed about the status of the bill and his report indicates that the prospects for the bill's passage this session are gloomy. The NDAA is the main proponent of the bill.

Logli reports that the bill is not currently under serious consideration in the House. Moreover, although Illinois Senator Richard Durbin, the bill's sponsor in prior years (along with Sen. Michael DeWine of Ohio), has indicated that he will introduce the bill again this session, it appears

that the bill will have a difficult time getting out of the Senate Judiciary Committee, where members have expressed reservations on the current provisions and structure of the bill. The major objection to or concern with the bill is that the NDAA has not been able to calculate a credible estimate of its cost. Another reservation expressed is that the legislative proposal provides the same benefits to government lawyers regardless of how diligent they may have been in trying to pay off their student loans, or who borrowed irresponsibly or excessively in order to get through school. Another objection is that the bill provides benefits only to government lawyers and ignores the needs of those in other public service fields (such as teachers and nurses, and especially those who work in low-paying jobs in poverty-stricken areas of the country). Logli notes, however, that many federal agencies already have loan forgiveness programs.

Logli also reports that other organi-

zations are interested in or considering lending their support to the bill. Other supporters include the American Bar Association, which has a government and public sector lawyers division, and a number of criminal defense bar associations. The NDAA is also currently reviewing its lobbying activities. It may hire a full-time staff person to conduct its lobbying, rather than contracting for this service. NDAA may also attempt to develop prosecutor and public defender caucuses in the House and Senate. It may amend the bill to allow government lawyers to take a tax credit on their loan payments, rather than for providing loan forgiveness outright. The problem with this approach, notes Logli, is that it requires that a major tax bill be introduced. Currently, there is no such bill.

Despite these difficulties, the commitment of the NDAA to the legislation remains firm. The Committee on Government Lawyers will keep its constituency informed of any further developments.

# Legislation preview

By Lynn Patton and Cindy Ervin, Springfield\*

**T**he 94th General Assembly convened on January 12, 2005. To date, 6,198 bills have been filed for consideration by the General Assembly. Although many of the proposals will not advance through the legislative process, the following is a listing of those bills that have passed the initial legislative deadlines and may be of general interest to government attorneys. The notations regarding a bill's status are current as of May 21, 2005. If you would like to review subsequent changes to a particular legislative proposal or if you would like an update on the status of a specific bill, please visit the General Assembly's Web site at <<http://www.ilga.gov/>>.

## Access to Governmental Services Act

**SB 334.** Creates the Access to Governmental Services Act. Requires each constitutional officer, State agency, circuit court clerk, and State program to take reasonable steps to provide equal access to public services for individuals with limited English proficiency, including: (i) having a sufficient number of qualified bilingual persons in public contact positions or as interpreters; and (ii) translation of important documents ordinarily provided to the public into any language spoken by at least 3 percent of the overall population of the State, as measured by the U.S. Census. Requires the Illinois Human Rights Commission to implement a process to address disputes arising under the Act. Status: This bill has passed the Senate. It is currently on first reading in the House and has been re-referred to the House Rules Committee.

## Clean Indoor Air Act

**SB 254.** Amends the Illinois Clean Indoor Air Act. Provides that a home rule unit of local government or any municipality in this State may regulate smoking in public places. Provides that this regulation must be no less restrictive than the regulation in the Act. Changes the home rule limitation from an absolute preemption to a limitation on the concurrent exercise of home

rule power. Maintains the exemption from home rule requirements for home rule units that passed ordinances regulating smoking before October 1, 1989. Limits the concurrent exercise of home rule powers. Status: This bill has passed the Senate. It is currently on third reading in the House.

## Counties Code

**HB 027.** Amends the Counties Code. Provides that a county board may lease for \$1 per year lands that the county owns, if the board determines that the lease will serve public health purposes or public safety purposes as described in the Illinois Emergency Management Agency Act (now, if the lease will serve public health purposes). Status: This bill has passed the House. It is currently on third reading in the Senate.

**HB 655.** Amends the Counties Code and the Illinois Municipal Code. Provides that, if a notice of an ordinance violation requires the respondent to answer within a certain amount of time, the county or a municipality with a population under 3,000,000 (now, population unspecified) must reply to the answer within the same amount of time. Further amends the Counties Code. Provides that a county's zoning authority concerning a telecommunications carrier's facilities includes AM broadcast towers and facilities. Provides that AM broadcast towers and facilities are not subject to a subsection that applies only to counties with 180,000 inhabitants or more. Amends the Tax Increment Allocation Redevelopment Act in the Illinois Municipal Code. Provides that the redevelopment project in the TIF District created by an ordinance adopted on August 20, 1985 by the Village of Mount Prospect must be completed by December 31 of the 35th year (now, 23rd year) after the year in which the ordinance was adopted. Status: This bill has passed both Houses and has been returned to the House for concurrence in the Senate Amendments.

**HB 832.** Amends the Counties

Code. Provides that, in its annual budget, a county may appropriate an amount not to exceed 5 percent (now, 3 percent) of the amount appropriated to the county's general corporate or operating fund, for the purpose of making specified capital improvements, repairs, or replacements with respect to real property or equipment or other tangible personal property of the county. Further amends the Counties Code concerning the Special County Occupation Tax for Public Safety or Transportation Law. Provides that, if a county imposes a tax under the Law, then it may, by ordinance, provide that the tax does not apply to the sale or use of motor fuel or to specific types of motor fuel. Provides that, if the county board provides that the tax does not apply with respect to the sale or use of motor fuel or specific types of motor fuel, then a referendum is not required to reimpose the tax with respect to that motor fuel. Status: This bill has passed both Houses and has been returned to the House for concurrence in a Senate Amendment.

**HB 1333.** Amends the Counties Code. Provides that no adult entertainment facility within an unincorporated area of a county shall be located within 3,000 feet of a specified area, such as a school, a day care center, a public park, a place of religious worship, or a residence (now, the ban applies throughout the county but does not include residences). Provides that the Attorney General or the state's attorney of the county in which the adult entertainment facility is located may seek enforcement by injunction. Provides that a county may adopt an ordinance to regulate adult entertainment facilities and includes definitions of specified anatomical areas and specified sexual activities. Provides that the ordinance may authorize the state's attorney to institute a civil action to restrain an ordinance violation. Authorizes fines of up to \$1,000 per day for each violation and injunctive relief to abate violations or to prevent violations from continuing. Status: This bill has passed both Houses.



**HB 3867.** Amends the Counties Code. Provides that a coroner may charge another county a fee for a required autopsy when the person who dies was transported to and died at a trauma center in the county, if the county from which the person was transported does not have a trauma center. The fee shall be \$1,000 or the cost of the autopsy, whichever is less. Effective immediately. Status: This bill is currently on third reading in the House and has been re-referred to the House Rules Committee.

**SB 150.** Makes legislative findings. Amends, among other things, the Counties Code and the Illinois Insurance Code. Provides for creation of risk retention trusts for the pooling of risks to provide professional liability coverage for physicians and health care professionals providing medical care and related health care. Authorizes a county board to incur indebtedness to ensure the availability of and improve hospital, medical, and health services. Requires the Secretary of Financial and Professional Regulation to establish a Professional Liability Insurance Resource Center on the World Wide Web, and amends the Clerks of Courts Act to require court clerks to provide certain relevant information. Effective immediately. Status: This bill has been assigned to the Senate Executive Committee and the committee deadline has been extended.

## Criminal Code

**HB 381.** Amends the Criminal Code of 1961. Provides that in addition to any other penalties imposed by law or by an ordinance or resolution of a unit of local government or school district, any individual or entity that knowingly obtains, or assists another to obtain, a contract with a governmental unit because of a false representation that the individual or entity, or the individual or entity assisted, is a minority owned business, female owned business, or business owned by a person with a disability, regardless of whether the preference was established by statute or local ordinance or resolution, is guilty of a Class 2 felony. Provides that the court shall order that an individual or entity convicted of this offense must pay to the governmental unit that awarded the contract a penalty equal to one and one-half times the amount of the contract

obtained because of the false representation. Status: This bill has passed both Houses.

## Election Code

**SB 204.** Amends the Election Code. Provides that an objector's petition to the nomination of a candidate for a municipal, township, school district, or community college district office shall be heard by: (i) the appropriate municipal, township, or education officers electoral board; or (ii) the county officers electoral board, as selected by the candidate. Provides that the candidate makes this selection in advance, on his or her statement of candidacy. Status: This bill has passed the Senate. It is currently on first reading in the House and has been re-referred to the House Rules Committee.

## Freedom of Information Act

**HB 483.** Amends the Freedom of Information Act. Redefines a "public record" to include a settlement agreement entered into by or on behalf a public body. Requires the removal of all personal and identifying information other than the parties' identification. With respect to the exemption for trade secrets and commercial information, requires that the secret or information be proprietary, confidential, or privileged and (now, or) that disclosure may cause competitive harm. Status: This bill has passed the House. It is currently on first reading in the Senate and has been referred to the Senate Rules Committee.

**SB 52.** Amends the Freedom of Information Act. In the Act's existing exemption of certain trade secrets and commercial or financial information obtained by a public body from inspection and copying requirements, states that the exemption specifically includes certain information relating to private equity funds but does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless disclosure of the identity of a privately held company may cause competitive harm. Status: This bill has passed both Houses.

## Governmental Account Audit Act

**SB 1944.** Amends the Governmental Account Audit Act. Requires the governing body of any governmental unit

receiving revenue of less than \$850,000 for any fiscal year shall file with the Comptroller an "accurate and complete" financial report (now, a financial report). Requires that the audits and audit reports that the governing body of each governmental unit receiving revenue of \$850,000 or more for any fiscal year is required to cause to be made shall include an "accurate financial report" of all the accounts and funds of the governmental unit. Defines "accurate financial report" to mean a clean opinion audited financial statement. Status: This bill has passed the Senate. It is currently on first reading in the House and has been re-referred to the House Rules Committee.

## Governmental Ethics Act

**SB 1966.** Amends the Illinois Governmental Ethics Act. Requires that a special government agent file his or her statement of economic interests within 60 days after assuming responsibilities as a special government agent (now, within 30 days after making an *ex parte* communication). Status: This bill has passed the Senate. It is currently on first reading in the House and has been re-referred to the House Rules Committee.

## Human Voice Contact Act

**HB 1589.** Creates the Human Voice Contact Act. Provides that a State agency that uses automated telephone answering equipment to answer incoming telephone calls must, during the normal business hours of the agency, provide the caller with the option of speaking to a live operator. Exempts field offices, telephone lines dedicated as hot lines for emergency services and systems designed to provide a complete transaction with a State agency solely through touch tone keys and automated prompts. Status: This bill has passed both Houses and has been returned to the House for concurrence in a Senate Amendment.

## Intergovernmental Cooperation Act

**HB 1395.** Amends the Intergovernmental Cooperation Act. Permits a special district that is coterminous with or entirely within the boundaries of a township to merge into the township (now, permitted only in counties with less than 1,000,000 population). Status: This

# Standing Committee on Government Lawyers

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bill has passed both Houses.

## Liquor Control Act

**HB 664.** Amends the Liquor Control Act of 1934. Provides that the designee of the mayor or president of the board of trustees of a city, village, or incorporated town or the designee of the president or chairman of a county board may be the local liquor control commissioner. Makes corresponding changes. Effective immediately. Status: This bill has passed the House. It is currently on first reading in the Senate and has been referred to the Senate Rules Committee.

**HB 1285.** Amends the Liquor Control Act of 1934. Allows an elected official to have a direct interest in the manufacture, sale, or distribution of alcoholic liquor if he or she is not a law enforcing public official, a mayor, a village board president, or president of a county board. Prohibits an elected official with a direct interest from participating in any matter affecting the manufacture, sale, or distribution of alcoholic liquor. Status: This bill has passed both Houses.

**HB 1289.** Amends the Liquor Control Act of 1934. Allows a manufacturer or importing distributor that is a prior continuous compliance taxpayer and that becomes a successor of a manufacturer or importing distributor to be deemed a prior continuous compliance taxpayer with respect to the acquired manufacturer or importing distributor. Effective immediately. Status: This bill has passed the House. It is currently on third reading in the Senate.

## Municipal Code

**HB 015.** Amends the Illinois Municipal Code. Authorizes certain water commissions to enter into intergovernmental police assistance agreements with counties or municipalities and to enter into intergovernmental agreements with any unit of local government in order to carry out the purposes for which the commission was formed. Status: This bill has passed both Houses.

**HB 413.** Amends the Illinois Municipal Code. In municipalities of less than 500,000, provides that the municipal clerk, when authorized by the corporate authorities of the municipality, may appoint the number of

deputy clerks necessary to discharge the functions and duties of the office of municipal clerk (now, the clerk may be authorized to appoint one deputy clerk). Provides that the corporate authorities of the municipality may limit the number of deputy clerks that the municipal clerk may appoint. Effective immediately. Status: This bill has passed both Houses.

**HB 655.** Amends the Counties Code and the Illinois Municipal Code. Provides that, if a notice of an ordinance violation requires the respondent to answer within a certain amount of time, the county or a municipality with a population under 3,000,000 (now, population unspecified) must reply to the answer within the same amount of time. Further amends the Counties Code concerning the Special County Occupation Tax for Public Safety or Transportation Law. Provides that, if a county imposes a tax under the Law, then it may, by ordinance, provide that the tax does not apply to the sale or use of motor fuel or to specific types of motor fuel. Provides that, if the county board provides that the tax does not apply with respect to the sale or use of motor fuel or specific types of motor fuel, then a referendum is not required to reimpose the tax with respect to that motor fuel. Status: This bill has passed both Houses and has been returned to the House for concurrence in a Senate Amendment.

**HB 887.** Amends the Illinois Municipal Code and the Illinois Vehicle Code. Provides that a unit of local government may not enact or enforce any ordinance or rule the violation of which would constitute a felony under the Vehicle Code provision prohibiting driving under the influence of alcohol, drugs, or intoxicating compounds. Provides that a municipal attorney may not prosecute, and a state's attorney may not allow a municipal attorney to prosecute, any ordinance violation that would constitute a felony under the DUI provision of the Vehicle Code. Provides that a municipal attorney must notify the state's attorney if a driver's alleged conduct would constitute a felony under the DUI provision. Status: This bill has passed both Houses.

**HB 940.** Amends the Illinois Municipal Code. Provides that a municipi-

pality may enact a retail theft ordinance for the retail theft of property where the theft is of property with a full retail value of less than \$150. Requires that citations issued under the retail theft ordinance be adjudicated in a court of law. Prohibits adjudication of those citations in any administrative adjudication system of the municipality. Amends the Criminal Code of 1961 to apply the civil liabilities for the offense of retail theft to persons who violate a municipal retail theft ordinance. Status: This bill is currently on second reading in the House and has been re-referred to the House Rules Committee.

**HB 1101.** Amends the Illinois Municipal Code. Provides that any unincorporated territory containing 60 acres or less may be annexed by any municipality by which it is bounded if it is wholly bounded by one or more municipalities in a county with a population of more than 800,000 inhabitants and less than 2,000,000 inhabitants and either: (i) a utility right-of-way that is at least 100 feet wide; or (ii) a railroad or operating property, as defined in the Property Tax Code, is immediately adjacent to, but exclusive of the property. Nothing in these provisions shall subject any railroad property to the zoning or jurisdiction of a municipality annexing the territory, nor shall the utility property be included for purposes of calculating the territory annexed. Status: This bill has passed the House. It is currently on first reading in the Senate and has been re-referred to the Senate Rules Committee.

**HB 1157.** Amends the Illinois Municipal Code. Provides that in a county that has more than 400,000 but fewer than 410,000 inhabitants, if an area of contiguous territory not exceeding one square mile that has at least 400 inhabitants residing in permanent dwellings and is located in a township that is adjacent to a county of fewer than 150,000 inhabitants, then that area and the area adjacent to it, not exceeding 4 square miles in total, may be incorporated as a village by following the existing procedure. Neither the consent of a municipality nor a finding of the county board needs to be obtained. Status: This bill has passed both Houses.

**HB 1284.** Amends the Illinois

Municipal Code. Provides that the rates of the Non-Home Rule Municipal Retailers' Occupation Tax Act, the Non-Home Rule Municipal Service Occupation Tax Act, and the Non-Home Rule Municipal Use Tax Act may not exceed 1 percent (now, the rates may not exceed 1/2 of 1 percent). Status: This bill lost on third reading in the House.

**HB 1389.** Amends the Illinois Municipal Code. Provides that property subject to an annexation agreement is subject to the police power, land use and other ordinances, control, and jurisdiction of the annexing municipality and that the ordinances, control, and jurisdiction of the annexing municipality divest those of other units of government claiming prior jurisdiction. Provides that the section does not apply to areas not contiguous to the annexing municipality unless: (i) the annexing municipality serves the area with at least one municipally-owned utility and the area is not more than 5 miles from the nearest corporate boundary of the annexing municipality; or (ii) the area is within one mile of the nearest corporate boundary of the annexing municipality. Defines a "municipally-owned utility." Provides that the amendatory changes apply to all existing agreements subject to the vested rights of parties to those agreements. Makes other changes. Status: This bill is currently on second reading in the House and has been re-referred to the House Rules Committee.

**HB 2611.** Amends the Illinois Municipal Code. Prohibits a corporate authority from entering into an agreement unless it provides public notice of the proposed boundary agreement by: (i) the posting of a public notice for not less than 15 consecutive days in the same location at which notices of village board or city council meetings are posted; and (ii) publication on at least one occasion in a newspaper of general circulation within the territory that is subject to the proposed agreement (rather than notice to owners of property affected by the proposed agreement). Provides that the validity of a boundary agreement may not be legally challenged on the grounds that the notice was not properly given unless the challenge is initiated within 12 months after the formal approval of the boundary agreement. Provides that an agreement

that addresses jurisdictional boundary lines shall be entirely unenforceable for any party thereto that subsequently enters into another agreement that addresses jurisdictional boundary lines that is in conflict with any of the terms of the first agreement without the consent of all parties to the first agreement. Provides that, except for those provisions that take effect prospectively, the provisions are declarative of existing law and shall not be construed to modify existing boundary line agreements or to create municipal powers not already in existence. Status: This bill has passed both Houses and has been returned to the House for concurrence in a Senate Amendment.

**HB 3694.** Amends the Illinois Municipal Code. Provides that if a non-home-rule municipality has extended sewers or water mains, or both, to another unit of local government, the municipality cannot thereafter require the annexation of the property to the municipality as a prerequisite to the continuation and maintenance of such service. Status: This bill has passed both Houses.

**SB 94.** Amends the Illinois Municipal Code. Provides that all final decisions of the corporate authorities of a municipality under the Zoning Division of the Illinois Municipal Code shall be deemed legislative actions. Status: This bill has passed the Senate. It is currently on first reading in the House and has been re-referred to the House Rules Committee.

**SB 168.** Amends the Illinois Municipal Code. Authorizes the corporate authorities of any municipality to license residential rental property managers by ordinance in a manner consistent with this section. Provides that the ordinance shall apply to any person, firm, or corporation that has management or control of a building or portion of a building, other than a hotel or motel, within the municipality, if it contains 3 or more apartments that are not occupied by an owner of the building. Defines "apartment." Requires the licensing ordinance to provide for a license fee in an amount not to exceed \$50 and to require only specified information from the licensee. Status: This bill is currently on second reading in the Senate and has been re-referred to the Senate



Rules Committee.

**SB 169.** Amends the Illinois Municipal Code. Provides that the corporate authorities of each municipality may provide for the extermination of pests (now, rats only). Defines “pests” to mean undesirable arthropods (including insects, spiders, mites, ticks, and related organisms), wood infesting organisms, rats, mice and other obnoxious or undesirable animals, but does not include a feral cat, a “companion animal” as that term is defined in the Humane Care for Animals Act, “animals” as that term is defined in the Illinois Diseased Animals Act, or animals protected by the Wildlife Code. Status: This bill has passed both Houses.

**SB 611.** Amends the Illinois Municipal Code. Prohibits the corporate authorities of a municipality from entering into a jurisdictional boundary line agreement unless written notice is provided to the owners of all property affected by the proposed agreement. Status: This bill has passed the Senate. It is currently on second reading in the House, and the final action deadline has been extended.

**SB 2085.** Amends the Illinois Municipal Code. Provides that if a non-home-rule municipality has extended sewers or water mains, or both, to another unit of local government, the municipality cannot thereafter require the annexation of the property to the municipality as a prerequisite to the continuation and maintenance of such service. Status: This bill has passed the Senate. It is currently on third reading in the House, and the final action deadline has been extended.

## Open Meetings Act

**HB 1038.** Amends the Open Meetings Act. Redefines a “meeting” to include gatherings, whether in person or by telephone call, video or audio conference, electronic means (such as e-mail, chat, and instant messaging), or other means of interactive communication, of a majority of a quorum of the members of a public body held for the purpose of discussing public business (now, a gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business). Requires that the number of public body members necessary to constitute

a quorum must be physically present at a meeting and that members in excess of the number required for a quorum may participate by means of a video or audio conference. If a member attends by video or audio conference, requires the minutes reflect his or her attendance by video or audio conference. Updates references to Code of Civil Procedure citations. Specifies the conditions under which a public body member not necessary for a quorum may attend a meeting by other than physical presence and permits public bodies to adopt additional provisions by rule. Status: This bill has passed the House. It is currently on first reading in the Senate.

**SB 226.** Amends the Open Meetings Act. With respect to a public body that has a website maintained by the public body’s full-time staff, requires that the public body post on the website: (i) notice of any agenda of a regular meeting of the public body’s governing body; (ii) notice of all meetings of the governing body; and (iii) beginning July 1, 2006, minutes of regular meetings of the governing body open to the public. Specifies how long the postings must remain on the website. Provides that failure to post on the website does not invalidate meetings or actions of the governing body. Makes other changes. Status: This bill has passed both Houses.

**SB 1296.** Amends the Open Meetings Act. Provides that the definition of “meeting” means any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business, except when the public body is the council of a municipality with a commission form of government consisting of 4 commissioners and a mayor, in which case “meeting” shall mean any gathering of a majority of the members held for the purpose of discussing public business. Status: This bill has passed the Senate. It is currently on first reading in the House and has been referred to the House Rules Committee.

**SB 1857.** Amends the Open Meetings Act. Provides that a public body’s failure to strictly comply with the requirements of the semi-annual review of closed meetings minutes does not make the minutes or verbatim recordings open to the public or available in judicial proceedings (other than those for violations of the

Act) if the public body, within 60 days of the discovery of its failure, conducts the review and reports in an open meeting that the need for confidentiality remains or no longer exists. Status: This bill has passed the Senate. It is currently on third reading in the House, and the final action deadline has been extended.

## Prevailing Wage Act

**HB 188.** Amends the Prevailing Wage Act. Provides that while participating on public works, each contractor and subcontractor shall submit monthly, in person, by mail, or electronically a certified payroll to the public body in charge of the project. Provides that any contractor or subcontractor subject to the Act who fails to submit a certified payroll or knowingly files a false certified payroll is in violation of the Act and is guilty of a Class B misdemeanor. Provides that the public body shall keep these records for at least 3 years. Provides that these payroll records are public records subject to disclosure under the Freedom of Information Act upon 2 business days’ notice. Excludes an employee’s address, telephone number, and social security number from public inspection. Status: This bill has passed both Houses and has been returned to the House for concurrence in a Senate Amendment.

## Procurement Code

**SB 1966.** Amends the Illinois Procurement Code. Prohibits all State employees from obtaining State contracts (now, those earning more than 60 percent of the Governor’s compensation). Requires that a waiver from the prohibition against obtaining State contracts must be filed within the earlier of 60 days after it is issued or when contract performance begins, and provides that the contract is voidable if the waiver is not filed within that period. Prohibits the State from entering into a contract with respect to the issuance of bonds or other securities with an entity that uses an independent consultant. Defines an independent consultant. Requires that a State contract with an entity subject to certain Municipal Securities Rulemaking Board requirements for reporting political contributions must include a certification of compliance during the contract with those requirements. Provides that violation makes



the contract voidable by the State and bars the entity from State contracts with respect to issuance of bonds or other securities for 10 years. Permanently bars an entity found guilty of violating the rules' prohibitions against obtaining or retaining securities business and making political contributions or payments. Status: This bill has passed the Senate. It is currently on first reading in the House and has been re-referred to the House Rules Committee.

### Property Tax Code

**HB 002.** Amends the Property Tax Code. Provides that if a county or municipality could acquire an interest in certain property, the county or municipality may petition the circuit court to determine: (i) that waste was committed or suffered on the property on or after the date that notice was received by the proper party but on or before the date the county or municipality acquires the property by deed; and (ii) the extent to which the fair market value of the property has been diminished by the waste. Holds each person whose acts or omissions caused the waste jointly and severally liable for the entire amount of the diminishment. Authorizes a county or municipality to deliver notice of its potential interest in the property to the county clerk to be mailed to the proper party. Sets forth the information to be included in the notice. Provides that notice is deemed to be received by the proper party within 3 business days after it is mailed by the clerk. Requires the proper party to promptly post copies of the notice throughout the premises and mail copies of the notice to all owners, occupants, and other interested. Provides that failure of the proper party to post and mail the notice shall be deemed suffering waste to be committed. Status: This bill has passed the House. It is currently on second reading in the Senate.

**HB 405.** Amends the Truth in Taxation Law in the Property Tax Code. Makes changes concerning the notice required to be published for a public hearing to approve a proposed property tax increase. Provides that for corporate and special purpose property taxes the notice shall set forth the proposed estimated (now, only proposed) corporate and special purpose property taxes to be levied for the cur-

rent year and provides that the dollar amount supplied in the notice is estimated and the percentage increase or decrease over the previous year is an estimated percentage. In those parts of the notice concerning estimated property taxes to be levied for debt service and public building commission leases and estimated total property taxes to be levied for the current year, provides that the dollar amount stated in the notice is estimated and that the percentage increase or decrease over the previous year is an estimated percentage. Status: This bill has passed the House. It is currently on first reading in the Senate.

**HB 1427.** Amends the Property Tax Code. In a provision allowing the county board to submit a bill to the township board of trustees for the reasonable costs incurred by the supervisor of assessments in completing certain assessments, provides that the moneys collected from the billing may be used by the supervisor of assessments only for the purpose of recouping costs incurred in completing the assessments. Status: This bill has passed the House. It is currently on third reading in the Senate, and the third reading deadline has been extended.

**HB 2595.** Amends the Special Service Area Tax Law in the Property Tax Code. Provides that a municipality may propose a special service area as provided in this Law for the purpose of providing improvements to any one or more buildings if the improvements are required by municipal ordinance in order to protect the health and safety of workers, tenants, and visitors in the buildings. Sets forth requirements for establishing the special service area. Requires that 100 percent (instead of "51 percent or more") of the owners of the real estate that is to be subject to the tax must file the petition agreeing to the establishment of the special service area. Provides that if the property owners file such a petition, then the municipality may (instead of "shall") establish the special service area. Status: This bill has passed the House. It is currently on third reading in the Senate, and the third reading deadline has been extended.

**SB 1294.** Amends the Special Service Area Tax Law in the Property Tax Code. Provides that a municipality

may propose a special service area as provided in this Law for the purpose of providing improvements to any one or more buildings if the improvements are required by municipal ordinance in order to protect the health and safety of workers, tenants, and visitors in the buildings. Sets forth requirements for establishing the special service area. Requires that 100 percent (instead of "51 percent or more") of the owners of the real estate that is to be subject to the tax must file the petition agreeing to the establishment of the special service area. Provides that if the property owners file such a petition, then the municipality may (instead of "shall") establish the special service area. Status: This bill has passed both Houses.

### Public Building Commission Act

**HB 330.** Amends the Public Building Commission Act. Provides that the county board of any county that has created a public building commission for a limited and specific purpose may expand that purpose only if the county board submits the question to the electors of the county at a regular election and it is approved by a majority of the electors voting on the question (now, under the bill the purpose may be expanded by resolution). Status: This bill has passed both Houses.

### Public Works Contract Change Order Act

**HB 2533.** Amends the Public Works Contract Change Order Act. Provides that if a change order for any public works contract: (i) is entered into by a unit of local government or school district; (ii) is not procured in accordance with the Illinois Procurement Code and the State Finance Act; and (iii) authorizes or necessitates any increase in the price of a subcontract under the contract that is 50 percent or more of the original subcontract price, then the portion of the contract that is subject to the change order must be resubmitted for bidding in the same manner for which the original contract was bid. Status: This bill has passed both Houses.

### Residential Inspection Ordinance Act

**SB 1727.** Creates the Residential Inspection Ordinance Act. Provides that

any ordinance, local law, rule, or regulation calling or providing for the inspection of residential property, whether owned or leased, shall require the consent of the owner or the owner's agent or, if different from the owner, the occupant of the premises before the inspection occurs. Provides that no local ordinance, law, rule, or regulation may require a prospective buyer or prospective tenant to consent to future inspections of real property as a condition of owning or occupying that real property. Prohibits a municipality, county, or other local governmental body, or any official or officer thereof, from refusing to issue real estate transfer stamps in connection with the sale or conveyance of real property on the basis that an inspection of the real property required by ordinance has not been completed or that the issues or problems identified by an inspection have not been corrected or completed. Provides that a local or municipal inspection ordinance may provide that prior to a sale or lease of the real estate an escrow be established in an amount equal to the lower of a reasonable amount required by the municipality to effect the repairs or an amount indicated by a contractor in a proposal to complete the required repairs. Preempts home rule. Status: This bill has passed the Senate. It is currently on first reading in the House and has been re-referred to the House Rules Committee.

### State Employees Group Insurance Act

**HB 731.** Amends the State Employees Group Insurance Act of 1971. Redefines a unit of local government to include a hospital provider owned by a county that has 100 or fewer hospital beds and that has not already joined the insurance program. Status: This bill has passed both Houses.

### Tort Immunity Act

**HB 3595.** Amends the Local Government and Governmental Employees Tort Immunity Act. Changes the definition of "local public entity" to include trustees of schools of townships and the treasurers of schools of townships. Status: This bill has passed both Houses.

### Township Code

**HB 236.** Amends the Township Code. Removes a provision that makes a section concerning the regulation of

certain occupations applicable only in counties with a population of less than 3,000,000. Status: This bill has passed the House. It is currently on first reading in the Senate.

**HB 2613.** Amends the Township Code. Provides that when a petition is filed that recommends that the township board prepare an open space plan, the township clerk shall provide public notice of the petition and the hearing on the petition within 5 business days after the petition is filed. Provides that there must be a hearing to determine the validity of the petition under the general election law within 30 days after the petition filing. Provides that a subsequent petition to adopt the proposed open space plan shall be approved if, after notice and a hearing, the petition is determined to be valid. Provides that a township may not exercise its eminent domain power as to land located within a municipality if the land is served by a recreation department, or a park district. Provides that when a petition is filed, signed by the greater of 5 percent of or 50 registered township voters, for a referendum to authorize the issuance of bonds to purchase and improve parks in the township, the township clerk shall give notice of the petition within 5 business days after the petition filing. Provides that the petition must also be filed on the same day with the circuit clerk. Provides that there must be a court hearing on the validity of the petition under the general election law within 30 days after the petition filing. Provides that if the court approves the referendum, the notice of the referendum shall state the amount of the bonds proposed and identify any park acquisition or improvements to be funded by the bonds. Provides an additional form of referendum ballot for specific park acquisitions or improvements to be funded by bonds. Provides that after a referendum passes the township board shall hold a public hearing on how the bond proceeds may be expended subject to the limitations created by the form of the referendum ballot used in the election. Provides that the bond proceeds may be used to support parks operated by the township, a municipality, or a park district. Makes other changes. Status: This bill has passed both Houses and has been returned to the House for concurrence in a Senate Amendment.

**SB 613.** Amends the Township Code.

Provides that when a petition is filed, signed by not less than 5 percent or 50 of the registered voters of the township, whichever is greater, that recommends that the board commence the preparation of an open space plan, the township clerk shall provide public notice within 5 business days after the petition is filed, by the regular notice procedures, of the existence of the filed petition. Provides that a hearing shall be conducted no less than 30 days after the petition was filed to determine the validity of the petition, which may be challenged in accordance with the general election law. Provides that a subsequent petition to adopt the open space plan that the township board adopted shall be approved if the petition is determined to be valid following public notice and a public hearing. Status: This bill has passed the Senate. It is currently on second reading in the House and the final action deadline has been extended.

**SB 465.** Amends the Township Code. Provides that a township officer of a township from which territory is disconnected shall continue in office until the end of his or her term and until a successor is elected or appointed and qualified, regardless of whether the officer resides in the township or the territory disconnected from the township. Provides that whenever territory is disconnected from a township and connected to a coterminous township on or after the effective date of the amendatory Act, the coterminous city shall provide to the township from which the territory was disconnected, for a period of 10 years, no later than 60 days after the first due date for real estate taxes in that county for that tax year, an amount equal to at least 50 percent of the real estate tax that was collected on the property in the tax year immediately preceding the disconnection and shall provide the remaining 50 percent on or before December 31. Amends the Election Code. Provides that the office of a township officer whose township boundaries are changed when territory is disconnected from a township and connected to a coterminous township is not vacant upon disconnection. Status: This bill has passed both Houses.

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