

August 26, 2008

To the Honorable Members of the
Illinois House of Representatives
95th General Assembly

Pursuant to Article IV, Section 9(e) of the Illinois Constitution, I am returning House Bill 824 with several recommendations. I applaud the General Assembly for its work on House Bill 824, and its attempt to address the issue of transparency in government and the appearance of influence of special interests in the awarding of State contracts. I firmly believe the bill's disclosure requirements and targeted ban on political contributions by entities doing business with the State constitute important steps in enhancing public confidence and transparency in the awarding of State contracts. Nonetheless, House Bill 824 does not go far enough. Its prohibitions and disclosure requirements are directed to merely a handful of those who play a role in the procurement process, leaving untouched many others to whom such requirements must equally apply to ensure an impartial, transparent, and open process for the procurement of State contracts.

As drafted, House Bill 824 prohibits certain entities contracting with the State from making campaign contributions to "the officeholder responsible for awarding the contracts," to "any other declared candidate for that office," and to "any political committee established to promote the candidacy" of such officeholder. The bill, however, fails to uniformly apply these same laudable prohibitions to political contributions made to the General Assembly and other constitutional officers who participate in the State procurement process and exercise discretion with respect to matters impacting State contracts. Under Article V, §17, of the Illinois Constitution, for example, the Comptroller has the responsibility to "order payments into and out of the funds held by the Treasurer," including payments to State contractors. Pursuant to Section 15, the Attorney General, as "the legal officer of the State," represents state agencies in the event of conflict with State contractors. Similarly, the Treasurer, under Section 18, disburses funds to State contractors upon direction from the Comptroller; and the Secretary of State, under Section 16, retains all official State records, including those of State contractors. And the General Assembly itself, under Article IV, has a critical role in the procurement process by legislating to establish particular public projects subject to the awarding of State contracts, appropriating funds for those projects, and terminating those projects if no longer in the public interest. Significantly, the General Assembly has the power to direct the location of public projects, which under certain circumstances, could be determinative of which contractor will be awarded the State contract to work on that project. As drafted, the bill would allow contractors to contribute to the campaigns of these executive and legislative officials to garner influence in the procurement process. Given that all constitutional officers and members of the General Assembly participate in creating, funding, directing, and overseeing State contracts, this ethics law must bar political contributions to each uniformly in order to achieve the desired goal of a fair and open procurement process,

stripped of any conflicts of interest.

In addition to the failure to include governmental actors critical to the procurement process, House Bill 824 leaves a gaping loophole, permitting covered State contractors to contribute to political committees of state parties, which are not barred from funneling the contributions back to the government officials in question. Only by strengthening the contribution ban will the citizens of the State gain greater assurance that government contractors will not endeavor to unduly influence the system.

In turn, by broadening the ban on contributions, entities wishing to do business with the State will become more confident in the State procurement process. The wider ban, therefore, will encourage responsible entities to bid on public projects, and thus protect the taxpayer.

In broadening the ban on political contributions from entities doing business with the State, I am mindful of the First Amendment interests that underlie contributions to political campaigns. Courts have recognized the important expressive and associational values in such participation in the political process. Only weighty State interests in combating the potential for corruption can justify abridging those values.

Indeed, in light of the constitutional interests, I am concerned that the General Assembly's initiative may be too porous to withstand judicial scrutiny. The General Assembly's bill prohibits entities contracting with the State from making campaign contributions to one discrete set of officeholders, while at the same time allowing those very same entities to contribute to others involved in the procurement process, such as the Comptroller and the Attorney General. Moreover, the House bill provides a green light for entities contracting with the State to make political contributions to members of the General Assembly who fund the projects on which the contractors work and, in most instances, who possess the power to direct where the projects go and to discontinue the projects. In failing to address the integrated nature of the procurement process, House Bill 824 undermines its core justification for regulating campaign contributions. Its concomitant failure to ban contributions to state political committees weakens the regulatory rationale even further. A more comprehensive approach, therefore, not only serves the public interest in eliminating potential undue influence and the appearance of such influence, but also strengthens the State's interest that is needed to override the business entities' First Amendment interest in contributing to political candidates.

In addition to the ban on political contributions from entities doing business with the State, I also commend the General Assembly's decision to impose disclosure requirements on those doing business with the State. Such sunlight can go a long way toward assuring the public that entities that work with the State do not wield undue influence in State government.

Again, however, House Bill 824 does not go far enough. We must safeguard the integrity of public office, and instill public confidence that no member of the executive or legislative branch can profit from his or her position. Legislators should not be allowed to simultaneously hold other State government jobs in addition to their legislative positions. Such dual government employment creates the potential for a conflict of interest because a legislator's duties to his or her constituents and his or her public employer are not always consistent. In the interest of greater transparency, legislators should also be required to disclose the names of clients and fees received when they are hired to lobby or appear before any unit of government.

Moreover, all increases in pay, whether for members of the executive or legislative branch, should be subject to approval as with any other legislative measure. This will ensure a greater measure of accountability and transparency.

Finally, I have recommended changes to ensure that the prohibitions in the bill do not conflict with federal law and do not jeopardize the State's ability to receive federal funds for State contracts that utilize federal funding. As drafted, the bill has the potential for running afoul of federal requirements that must be met for the State to receive federal funds. This is a critical flaw, particularly at a time when the State of Illinois is in desperate need of a capital works bill requiring federal funding for capital construction and repair.

These changes would align Illinois with other states that have acted to bolster the public's faith in good governance.

Therefore, pursuant to Article IV, Section 9(e) of the Illinois Constitution of 1970, I hereby return House Bill 824, entitled "AN ACT concerning State government.", with the following specific recommendations for change:

on page 1, below line 3, by inserting the following:

"Section 2. The Illinois Governmental Ethics Act is amended by changing Sections 4A-102 and 4A-103 and by adding Section 2-106 as follows:

(5 ILCS 420/2-106 new)

Sec. 2-106. Dual employment. No member of the General Assembly, during the term for which he has been elected or appointed may be employed by the State, a municipality, or unit of local government. This prohibition does not extend to employment as an elected official, firefighter, police officer, school counselor, teacher, or university instructor.

As used in this Section:

"elected official" means any individual who was elected to an office in an election certified by the State Board of Elections;

"firefighter" means an individual employed by a fire service;

"police officer" means an individual employed in a regularly constituted police department appointed and sworn or designated by law as a peace officer;

"school counselor" has the meaning ascribed to it in Section 10-22.24a of the School Code;

"teacher" means any or all school district employees regularly required to be certified under laws relating to the certification of teachers;

"university instructor" means any member of the educational staff of the University of Illinois, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, or the Illinois Mathematics and Science Academy whose employment is permanent and continuous or who is employed in a position in which services are expected to be rendered on a continuous basis for at least 4 months or one academic term, whichever is less.

(5 ILCS 420/4A-102) (from Ch. 127, par. 604A-102)

Sec. 4A-102. The statement of economic interests required by this Article shall include the economic interests of the person making the statement as provided in this Section. The interest (if constructively controlled by the person

making the statement) of a spouse or any other party, shall be considered to be the same as the interest of the person making the statement. Campaign receipts shall not be included in this statement.

(a) The following interests shall be listed by all persons required to file:

(1) The name, address and type of practice of any professional organization or individual professional practice in which the person making the statement was an officer, director, associate, partner or proprietor, or served in any advisory capacity, from which income in excess of \$1200 was derived during the preceding calendar year;

(2) The nature of professional services (other than services rendered to the unit or units of government in relation to which the person is required to file) and the nature of the entity to which they were rendered if fees exceeding \$5,000 were received during the preceding calendar year from the entity for professional services rendered by the person making the statement.

(3) The identity (including the address or legal description of real estate) of any capital asset from which a capital gain of \$5,000 or more was realized in the preceding calendar year.

(4) The name of any unit of government which has employed the person making the statement during the preceding calendar year other than the unit or units of government in relation to which the person is required to file.

(5) The name of any entity from which a gift or gifts, or honorarium or honoraria, valued singly or in the aggregate in excess of \$500, was received during the preceding calendar year.

(b) The following interests shall also be listed by persons listed in items (a) through (f) and item (l) of Section 4A-101:

(1) The name and instrument of ownership in any entity doing business in the State of Illinois, in which an ownership interest held by the person at the date of filing is in excess of \$5,000 fair market value or from which dividends of in excess of \$1,200 were derived during the preceding calendar year. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description). No time or demand deposit in a financial institution nor any debt instrument need be listed;

(2) Except for professional service entities, the name of any entity and any position held therein from which income of in excess of \$1,200 was derived during the preceding calendar year, if the entity does business in the State of Illinois. No time or demand deposit in a financial institution, nor any debt instrument need be listed.

(3) The identity of any compensated lobbyist with whom the person making the statement maintains a close economic association, including the name of the lobbyist and specifying the legislative matter or matters which are the object of the lobbying activity, and describing the general type of economic activity of the client or principal on whose behalf that person is lobbying.

(c) The following interests shall also be listed by persons listed in items (g), (h), and (i) of Section 4A-101:

(1) The name and instrument of ownership in any entity doing business with a unit of local government in relation to which the person is required to file if the ownership interest of the person filing is greater than \$5,000 fair market value as of the date of filing or if dividends in excess of \$1,200 were received from the entity during the preceding calendar year. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description). No time or demand deposit in a financial institution, nor any debt instrument need be listed.

(2) Except for professional service entities, the name of any entity and any position held therein from which income in excess of \$1,200 was derived during the preceding calendar year if the entity does business with a unit of local government in relation to which the person is required to file. No time or demand deposit in a financial institution, nor any debt instrument need be listed.

(3) The name of any entity and the nature of the governmental action requested by any entity which has applied to a unit of local government in relation to which the person must file for any license, franchise or permit for annexation, zoning or rezoning of real estate during the preceding calendar year if the ownership interest of the person filing is in excess of \$5,000 fair market value at the time of filing or if income or dividends in excess of \$1,200 were received by the person filing from the entity during the preceding calendar year.

(d) The following interests shall also be listed by persons listed in item (a) of 4A-101:

(1) The name of each client or entity on behalf of whom the individual filing the Statement or his or her spouse personally engaged in lobbying or a representation case in the preceding 12 months, for which compensation in excess of \$5,000 was received by either the individual filing the Statement or his or her spouse, or by any other entity in which the individual filing the Statement or his or her spouse was an officer, director, associate, partner, member, proprietor, or served in an advisory capacity; and

(2) The name of each client or entity that retained, hired, or otherwise engaged an entity in which the individual filing the Statement or his or her spouse has an ownership interest in excess of 7 1/2%, for the purpose of lobbying or a representation case in the preceding 12 months, for which compensation in excess of \$5,000 was received by the entity; and

(3) The name of each client or entity that retained, hired, or otherwise engaged any entity for the purpose of lobbying or a representation case in the preceding 12 months, as a result of which the individual filing this Statement or his or her spouse received financial compensation in excess of \$5,000.

For each client or entity listed pursuant to this subsection, the exact amount of compensation received from services rendered in connection with the lobbying or representation case listed, and the identity of the unit of government before which such services were rendered.

As used in this subsection:

"lobbying" means communicating with representatives of a municipality, unit of local government, State agency, or the General Assembly for the ultimate purpose of influencing executive, legislative, or administrative action. "Lobbying" does not include communications with a State agency, a municipality, a unit of local government, or a member of the General Assembly made in the course of a member of the General Assembly's legislative duties.

"representation case" means the representation of any person, client or principal in any matter before any State agency, municipality, or unit of local government where the action or non-action of the State agency, municipality, or unit of local government involves the exercise of discretion. For purposes of this subsection, "representation case" does not include (i) the professional representation of any person, client or principal in any matter before any court created under Article VI of the Constitution of the State of Illinois or any court created under Article III of the Constitution of the United States, or (ii) inquiries for information or other services rendered in a legislative capacity on behalf of a constituent or other member of the public.

(5 ILCS 420/4A-103) (from Ch. 127, par. 604A-103)

Sec. 4A-103. The statement of economic interests required by this Article to be filed with the Secretary of State shall be filled in by typewriting or hand printing, shall be verified, dated, and signed by the person making the statement and shall contain substantially the following:

STATEMENT OF ECONOMIC INTEREST
(TYPE OR HAND PRINT)

.....
(name)

.....
(each office or position of employment for which this statement is filed)

.....
(full mailing address)

GENERAL DIRECTIONS:

The interest (if constructively controlled by the person making the statement) of a spouse or any other party, shall be considered to be the same as the interest of the person making the statement.

Campaign receipts shall not be included in this statement.

If additional space is needed, please attach supplemental listing.

1. List the name and instrument of ownership in any entity doing business in the State of Illinois, in which the ownership interest held by the person at the date of filing is in excess of \$5,000 fair market value or from which dividends in excess of \$1,200 were derived during the preceding calendar year. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description.) No time or demand deposit in a financial institution, nor any debt instrument need be listed.

| Business Entity | Instrument of Ownership |
|-----------------|-------------------------|
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2. List the name, address and type of practice of any professional organization in which the person making the statement was an officer, director, associate, partner or proprietor or served in any advisory capacity, from which income in excess of \$1,200 was derived during the preceding calendar year.

| Name | Address | Type of Practice |
|-------|---------|------------------|
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3. List the nature of professional services rendered (other than to the State of Illinois) to each entity from which income exceeding \$5,000 was received for professional services rendered during the preceding calendar year by the person making the statement.

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4. List the identity (including the address or legal description of real estate) of any capital asset from which a capital gain of \$5,000 or more was realized during the preceding calendar year.

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5. List the identity of any compensated lobbyist with whom the person making the statement maintains a close economic association, including the name of the lobbyist and specifying the legislative matter or matters which are the object of

the lobbying activity, and describing the general type of economic activity of the client or principal on whose behalf that person is lobbying.

| | | |
|----------|--------------------|---------------------|
| Lobbyist | Legislative Matter | Client or Principal |
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6. List the name of any entity doing business in the State of Illinois from which income in excess of \$1,200 was derived during the preceding calendar year other than for professional services and the title or description of any position held in that entity. (In the case of real estate, location thereof shall be listed by street address, or if none, then by legal description). No time or demand deposit in a financial institution nor any debt instrument need be listed.

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| Entity | Position Held |
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7. List the name of any unit of government which employed the person making the statement during the preceding calendar year other than the unit or units of government in relation to which the person is required to file.

.....

8. List the name of any entity from which a gift or gifts, or honorarium or honoraria, valued singly or in the aggregate in excess of \$500, was received during the preceding calendar year.

.....

9. For members of the General Assembly and candidates for membership in the General Assembly, list the name of each client or entity on behalf of whom the individual filing the Statement or his or her spouse personally engaged in lobbying or a representation case in the preceding 12 months, for which compensation in excess of \$5,000 was rendered to either the individual filing the Statement or his or her spouse, or to any other entity in which the individual filing the Statement or his or her spouse was an officer, director, associate, partner, member, proprietor, or served in an advisory capacity. This includes the name of the unit of government before which the services were rendered, as well as the exact amount of compensation received from services rendered.

For purposes of this statement, "lobbying" and "representation case" have the meanings ascribed to those terms in Section 4A-102 of the Illinois Governmental Ethics Act.

| | | |
|----------------------|---------------------------|---------------|
| <u>Client/Entity</u> | <u>Unit of Government</u> | <u>Amount</u> |
| | | |
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| | | |

10. For members of the General Assembly and candidates for membership in the General Assembly, list the name of each client or entity that retained, hired, or otherwise engaged an entity in which the individual filing the Statement or his or her spouse has an ownership interest in excess of 7 1/2%, for the purpose of lobbying or a representation case in the preceding 12 months, for compensation in excess of \$5,000. This includes the name of the unit of government before which the services were rendered, as well as the exact amount of compensation received from services rendered.

For purposes of this statement, "lobbying" and "representation case" have the meanings ascribed to those terms in Section 4A-102 of the Illinois Governmental Ethics Act.

- (f) the average consumer prices commonly known as the cost of living,
- (g) the overall compensation presently received by the public officials and other benefits received,
- (h) the interests and welfare of the public and the financial ability of the State to meet those costs, and
- (i) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of such compensation.

The Board shall conduct public hearings prior to filing its ~~reports~~ report.

At the public hearings, the Board shall allow interested persons to present their views and comments. The Board may prescribe reasonable rules for the conduct of public hearings, to prevent undue repetition. The meetings of the Board are subject to the Open Meetings Act.

The Board shall ~~propose (i) one file an initial~~ report with respect to all offices and positions, except judges and State's attorneys (known as "report A") and (ii) one report with respect to judges and State's attorneys (known as "report B"). ~~The Board shall file the reports with the House of Representatives, the Senate, the Comptroller and the Secretary of State. Subsequent reports shall be filed therewith before April 1 in each even-numbered year. Report A shall state thereafter stating the annual salary for all offices and positions, except judges and State's attorneys, for which the Board files reports members of the General Assembly, the elected State constitutional officers. Report B shall state and certain appointed State officers and compensated employees and members of certain state departments, agencies, boards, and commissions whose terms begin in the next calendar year, the annual salary for State's attorneys, and the annual salary for the Auditor General and for Supreme Court, Appellate Court, Circuit Court, and Associate judges. If a the report increases the annual salary of judges, State's attorneys, and the Auditor General, such increase shall take effect when the report is approved as soon as the time period for disapproval or reduction, as provided in subsection (b) of Section 5, has expired.~~

The salaries in ~~a the~~ report or as reduced by the General Assembly, other than for judges, State's attorneys and the Auditor General, shall take effect as provided by law.

(25 ILCS 120/5) (from Ch. 63, par. 905)

Sec. 5. (a) If the Board fails to recommend a change in salary or the General Assembly ~~does not approve a disapproves the~~ report as provided in subsection (b), and a new term for any officer provided for in this Act begins, the salary for the new term shall be the same as the salary in effect when the previous term ended.

(b) The General Assembly may ~~approve a disapprove the~~ report of the Board in whole, or reduce it in whole proportionately, within 30 session days after each house of the legislature next convenes after the report is filed, by adoption of a resolution by a record vote of the majority of the members elected in each house directed to the Board. Such resolution shall be binding upon the Board. A resolution may approve or reduce no more than one report, and no more than one resolution may be adopted by a single vote.

~~For the initial report filed by the Board after this Act takes effect, the General Assembly may, by January 9, 1985, disapprove the report of the Board in whole, or reduce it in whole proportionately, after the report is filed, by the adoption of a resolution by a record vote of the majority of the members.": and~~

on page 8, line 23, after "executive branch", by inserting "or legislative branch"; and

on page 8, line 23, after "government", by inserting ", the Auditor General,"; and

on page 11, by replacing lines 1 through 20 with the following:

"to (i) any political committees established to promote the candidacy of an officeholder or declared candidate for that office, (ii) any political committees established to promote the candidacy of any member of the General Assembly or declared candidate for membership in the General Assembly, or (iii) any political committee of a state central committee of any political party that is represented by an officeholder or member of the General Assembly or a declared candidate for that office or membership in the General Assembly. This prohibition shall be effective for the duration of the term of the contract and for a period of 2 years following the expiration or termination of the contracts.

(c) Any business entity whose aggregate pending bids and proposals on State contracts total more than \$50,000, or whose aggregate pending bids and proposals on State contracts combined with the business entity's aggregate annual total value of state contracts exceed \$50,000, and any affiliated entities or affiliated persons of such business entity, are prohibited from making any contributions to (i) any political committee established to promote the candidacy of any officeholder or declared candidate for that office, (ii) any political committee established to promote the candidacy of any member of the General Assembly or declared candidate for membership in the General Assembly, or (iii) any political committee of a state central committee of any political party that is represented by an officeholder or member of the General Assembly or a declared candidate for that office or membership in the General Assembly. This prohibition shall be effective during the period beginning on the date the invitation for bids or request for proposals is issued and ending on the day after the date the contract is awarded."; and

on page 12, below line 13, by inserting the following:

"(f) Nothing in this Section shall prohibit an individual from making a contribution to a political committee established to promote his or her own candidacy for office or for membership in the General Assembly.

(g) This Section shall not apply in circumstances when it is determined by the federal government or a court of competent jurisdiction that its application would violate federal law or regulation or otherwise prevent the State's receipt of federal funds."

With these changes, House Bill 824 will have my approval. I respectfully request your concurrence.

Sincerely,

ROD R. BLAGOJEVICH

Governor