July 22, 2016

To the Honorable Members of
The Illinois Senate,
99th General Assembly:

Today I return Senate Bill 2964, an amendment to the Prevailing Wage Act, with specific recommendations for change.

The Prevailing Wage Act requires public bodies, including the State of Illinois, units of local governments, and school districts, to pay prevailing wage rates for construction of public works. The law requires each public body to investigate and ascertain the prevailing wage for each trade every June. The law also requires the Illinois Department of Labor to conduct its own survey. In practice, many local public bodies rely upon the Department's work and adopt the wage and benefit rates recommended by the Department.

Senate Bill 2964 would fundamentally change the law to delegate the rate-setting responsibility to labor organizations and to eliminate local government involvement. These changes are unconstitutional, would diminish local control over prevailing wage practices, and hurt taxpayers. I am therefore returning the bill with recommendations to address these concerns.

Unconstitutional Delegation of Government Power

Senate Bill 2964 would require the Department of Labor and each local public body to adopt the rates specified in collective bargaining agreements whenever as few as 30% of workers are represented by the union. The Illinois Supreme Court has previously held this arrangement to be unconstitutional. In 1951 the General Assembly amended the Prevailing Wage Act to provide that where workers' wages are negotiated under a collective bargaining agreement, the wages specified in that agreement would be the prevailing wage. In *Bradley v. Casey* (1953), the Illinois Supreme Court held:

> "[D]efining wages under a collective bargaining agreement as the prevailing rate of wages in a given locality[] is invalid for the reason that it delegates a discretionary power to private parties and that it tends to be too restrictive and discriminatory in defining that to be fact which is not a fact. Upon close analysis it can be seen that this amendment permits the fixing of the standard rather than finding or ascertaining an existing fact. This amendment then, being vulnerable to the foregoing criticism, is clearly unconstitutional."

Proponents of Senate Bill 2964 note that, in practice, the Department has historically relied upon wage and benefit rates taken directly from collective bargaining agreements. But as the Supreme Court observed, there is a difference between relying on those agreements in practice and fixing a standard by statute.

Wage and benefit rates determined by a collective bargaining agreement are a relevant factor in determining the prevailing wage. But to limit the prevailing wage to the wage specified in a collective bargaining agreement would mean disregarding all those workers whose wages are not set by that agreement. Senate Bill 2964 would fix the prevailing wage to the wage applicable to as few as 30% of the workers in a given trade, meaning that the wage applicable to the remaining 70% of workers would be disregarded.

The bill also creates a presumption in favor of union rates, even where fewer than 30% of workers are represented by the union. The bill would place the burden on the challenger to prove that fewer than 30% of workers are represented, which would require the challenger to conduct a comprehensive market analysis – a virtually impossible task within the time constraints provided and the resources required.

For these reasons, Senate Bill 2964 does not meet constitutional standards and threatens to disregard a significant portion of the workforce. The changes recommended below would address these concerns while still ensuring that rates established by collective bargaining agreements are taken into appropriate consideration when setting prevailing wage rates. Specifically, with these changes the law would require public bodies to give appropriate consideration to rates established by collective bargaining agreements. The amended law would also permit a public body to rely solely upon collective bargaining agreement rates where the public body has determined that the work is predominantly performed under those agreements and that consideration of other evidence would not affect the prevailing wage rates.

Local Government Involvement

Senate Bill 2964 would also eliminate the role of local governments in setting prevailing wage rates. Illinois prevailing wage requirements add to the cost of taxpayer-funded projects. If the State is going to mandate local government compliance, the State should also respect the role of local governments in determining prevailing wage rates, which necessarily vary by county.

The changes recommended below would retain the role of local governments in ascertaining and adopting prevailing wage rates. The Department would continue to conduct a statewide survey. While local governments may continue to rely on the Department's investigation, local governments should be ultimately responsible for setting local wage and benefit rates.

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Senate Bill 2964 does not meet constitutional standards and would not be the best policy for Illinois or taxpayers. I am returning the bill with specific recommendations to address these concerns, while still ensuring that rates established by collective bargaining agreements are taken into appropriate consideration when setting prevailing wage rates.

Therefore, pursuant to Section 9(e) of Article IV of the Illinois Constitution of 1970, I hereby return Senate Bill 2964, entitled "AN ACT concerning employment", with the following specific recommendations for change:

On page 1, by replacing line 5 with "Sections 2, 4, and 9 as follows:"; and

On page 5, by replacing lines 11 through 20 with the following: "<u>locality in which the work is performed. The public body awarding the contract shall ascertain the general prevailing rate of hourly wages pursuant to this Act.</u>"; and

On page 5, by replacing lines 21 through 25 with "(b) (blank).”; and

On page 6, by replacing lines 1 through 14 with "(c) (blank).”; and

On page 7, by replacing line 4 with "ascertained by the public body or by the Department of Labor”; and

On page 7, by replacing lines 11 through 24 with the following: "employed by them in the execution of the contract or such work; provided, however, that if the public body desires that the Department of Labor ascertain the prevailing rate of wages, it shall notify the Department of Labor to ascertain the general prevailing rate of hourly wages for work under contract, or for work performed by a public body without letting a contract as required in the locality in which the work is to be performed, for each craft or type of worker or mechanic needed to execute the contract or project or work to be performed. Upon such notification the Department of Labor shall ascertain such general prevailing rate of wages, and certify the prevailing wage to such public body.”; and

On page 8, by replacing line 2 and 3 with "that not less than the prevailing rate of wages ascertained ~~as found~~ by the public body or Department of Labor or determined by the court”; and

On page 8, by replacing line 13 with "by the public body or Department of Labor or determined by the”; and

On page 12, by replacing lines 6 through 8 with the following: "be consolidated in a single hearing before the Department. Such consolidation shall occur whether each separate investigatory hearing is conducted by a public body or the Department. The”; and

On page 13, by deleting lines 5 through 18; and

On page 13, by replacing lines 20 through 24 with the following:

"Sec. 9. To effectuate the purpose and policy of this Act, each public body shall, during the month of June of each calendar year, investigate and ascertain the prevailing rate of wages as defined in this Act and publicly post or keep available for inspection by any interested party in the main”; and

On page 14, by replacing lines 1 through 4 with the following: "office of such public body its determination of such prevailing rate of wage and shall promptly file, no later than July 15 of each year, a certified copy thereof in the office of the Illinois Department of Labor. The Department of Labor shall,”; and

On page 14, by replacing lines 8 through 26 with the following:

"ascertained on its official website each year. If a public body does not investigate and ascertain the prevailing rate of wages during the month of June as required by the previous paragraph, then the prevailing rate of wages for that public body shall be the rate as determined by the Department under this paragraph for the county in which such public body is located. As part of its investigation a public body or the Department of Labor shall give appropriate consideration to rates of wages required to be paid under collective bargaining agreements for those crafts and types of laborers, workers, and mechanics in localities. A public body or the Department of Labor may limit its investigation with respect to a specific craft or type of laborer, worker, or mechanic in a specific locality to only rates of wages required to be paid under

collective bargaining agreements if the public body or the Department of Labor, as applicable, has first determined with competent evidence that work currently performed in that locality by that craft or type of laborer, worker, or mechanic is predominantly performed under a collective bargaining agreement and that consideration of other evidence would not affect the prevailing rate of wages.

Where the Department of Labor ascertains the prevailing rate of wages, it is the duty of the Department of Labor within 30 days after receiving a notice from the public body authorizing the proposed work, to conduct an investigation to ascertain the prevailing rate of wages as defined in this Act"; and

On page 15, by replacing lines 1 through 18 with the following:

"and such investigation shall be conducted in the locality in which the work is to be performed. The Department of Labor shall send a certified copy of its findings to the public body authorizing the work and keep a record of its findings available for inspection by any interested party in the office of the Department of Labor at Springfield.

The public body except for the Department of Transportation with respect to highway contracts shall within 30 days after filing with the Department of Labor, or the Department of Labor shall within 30 days after filing with such public body, publish in a newspaper of general circulation within the area that the determination is effective or on its public website, a notice of its determination and shall promptly mail a copy of its determination to any employer, and to any association of employers and to any person or association of employees who have filed their names and addresses, requesting copies of any determination stating the particular rates and the particular class of workers whose wages will be affected by such rates."; and

On page 15, by replacing line 23 through 26 with the following: "objectionable by filing a written notice with the public body or Department of Labor, whichever has made such determination, stating the specified grounds of the objection."; and

By replacing page 16 with the following:

"It shall thereafter be the duty of the public body or Department of Labor to set a date for a hearing on the objection after giving written notice to the objectors at least 10 days before the date of the hearing and said notice shall state the time and place of such hearing. Such hearing by a public body shall be held within 45 days after the objection is filed, and shall not be postponed or reset for a later date except upon the consent, in writing, of all the objectors and public body. If such hearing is not held by the public body within the time herein specified, the Department of Labor may, upon request of the objectors, conduct the hearing on behalf of the public body.

The public body or Department of Labor, whichever has made such determination, is authorized in its discretion to hear each written objection filed separately or consolidate for hearing any one or more written objections filed with them. At such hearing, the public body or Department of Labor shall introduce in evidence the investigation it instituted which formed the basis of its determination, and the public body or Department of Labor, or any interested objectors may thereafter"; and

By replacing page 17 with the following:

"introduce such evidence as is material to the issue. Thereafter, the public body or Department of Labor, must rule upon the written objection and make such final determination as it believes the evidence warrants, and promptly file a certified copy of its final determination with such public body, and serve a copy by personal service, ~~or~~ registered mail, or electronic mail on all

parties to the proceedings. The final determination by the Department of Labor or a public body shall be rendered within 30 days after the conclusion of the hearing.

If proceedings to review judicially the final determination of the public body or Department of Labor are not instituted as hereafter provided, such determination shall be final and binding.

The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of any public body or the Department of Labor hereunder. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

Appeals from all final orders and judgments entered by the court in review of the final administrative decision of the public body or Department of Labor, may be taken by any party to the action.

Any proceeding in any court affecting a determination of the Department of Labor or public body shall have priority in"; and

On page 18, by replacing lines 3 through 7 with the following:

"In all reviews or appeals under this Act, it shall be the duty of the Attorney General to represent the Department of Labor, and defend its determination. The Attorney General shall not represent any public body, except the State, in any such review or appeal."; and

On page 18, by deleting lines 9 through 25; and

By deleting page 19.

With these changes, Senate Bill 2964 will have my approval. I respectfully request your concurrence.

Sincerely,

Bruce Rauner
GOVERNOR