

## Eminent Domain: State Responses to *Kelo*

Since last year's U.S. Supreme Court decision in *Kelo v. City of New London*, allowing a city to take private property for economic development, legislators in at least 18 states and Congress have proposed to limit such authority. This article summarizes *Kelo*; describes Illinois laws and court decisions on eminent domain; and summarizes state and Congressional reactions. Illinois courts have allowed local governments to take private real estate for economic development by private developers, but only where the property was run-down or its ownership was so scattered that it was impractical to develop.

### Background

The state of Connecticut designated New London a "distressed municipality" in 1990. In 1996 the city lost a federal submarine base with over 1,500 jobs. The New London Development Corporation (NLDC) was reactivated. In 1998 the state authorized over \$5 million in bonds to support the NLDC's planning, and



*Not actual Connecticut photo*

\$10 million to create a Fort Trumbull State Park where the base had been. Drugmaker Pfizer Inc. announced a \$300 million research facility near Fort Trumbull.

After getting city approval and holding several neighborhood meetings, NLDC sent its redevelopment plans to the state.

With state approval, it finalized its plan, focusing on redeveloping 90 acres of the Fort Trumbull area. It has 115 private properties and 32 acres of the former naval base. The plan called for that land to be divided into seven parcels to be developed as follows:

- Parcel 1: A waterfront conference hotel at the center of a "small urban village" with restaurants and shops; marinas for recreation and fishing; and a walkway connecting waterfront areas of the development.
- Parcel 2: An urban neighborhood with 80 new homes linked by a public walkway to the rest of the development.
- Parcel 3: A 90,000-square-foot research and development office facility just north of the Pfizer facility.
- Parcel 4: 2.4 acres for parking.
- Parcels 5-7: Office and retail space, parking, and water-dependent commercial uses.

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## Cities Try Various Ways to Control Dangerous Dogs

Incidents in which children are mauled or even killed by domestic dogs have resulted in many ordinances restricting or banning the keeping of dogs considered inherently dangerous. Some ordinances mention specific breeds of dogs—such as those commonly called "pit bulls."

Some states, including Illinois, ban those "breed-specific" ordinances; but most states either authorize them or say nothing on the subject. Another approach, taken by Illinois law and some cities, is to authorize control of dogs deemed dangerous regardless of breed. The relatively few court cases on "dangerous dog" ordinances have mostly upheld them.

### Laws

Illinois' Animal Control Act defines a "dangerous dog" as a dog that, while away from its owner's property and not under someone's control, behaves

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The city approved the plan and authorized use of eminent domain to take the land. NLDC bought most of the 90 acres; but some owners in parcels 3 and 4 would not sell. NLDC filed condemnation suits against them in state court.

Nine of them argued that taking their property would violate the Fifth Amendment to the U.S. Constitution, which says in relevant part: “[N]or shall private property be taken *for public use*, without just compensation” (emphasis added). The trial court prohibited taking the properties in parcel 4 (for parking) but refused to prevent the takings in parcel 3 (for offices).

The Connecticut Supreme Court upheld all the proposed takings. It said state law declared that “the taking of land, even developed land, as part of an economic development project is a ‘public use’ and in the ‘public interest,’” and held that economic development is a valid public use under both the Connecticut and U.S. Constitutions.

The U.S. Supreme Court in June 2005 affirmed by a 5-4 vote. It said the city would be barred from taking land to benefit a “particular” private party or “under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit.” But none of the Connecticut judges had found evidence of such an improper purpose.

The U.S. Supreme Court’s majority acknowledged that while the taking was not to help a specific private entity, not all of the land taken would be open for general public use; some would be used by lessees for private purposes. The Court said the validity of the standard of “use by the public” as the test for what is a public use has

eroded in recent decades, because it was hard to administer and did not keep up with the needs of society.

The majority embraced a broader interpretation of what is a public use, and held that the city’s plan satisfied that requirement of the Fifth Amendment. The court deferred to the city’s determination that the area was distressed enough to justify a redevelopment program.

The owners had asked the Court to hold categorically that economic development does not qualify as public use. But the majority found no logical distinction between economic development and other recognized public purposes. They said the public may be better served by a private business than by a government department. The owners warned that nothing would stop government from transferring one person’s property to another simply because the recipient would put it to a more productive use; the majority said that such a case could be confronted if it arose.

The four dissenting members of the Court said that taking private property by eminent domain solely for economic development does not constitute a public use, so such takings are unconstitutional.

### Illinois Constitution and Laws

The Illinois Constitution and laws limit governments’ power to take property. The Constitution of 1970 says this on the subject:

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

Neither the U.S. nor the Illinois Constitution, nor any Illinois law, defines

“public use” for this purpose. However, Article VII of the Code of Civil Procedure contains procedures for using the eminent domain power. It requires governments to try to negotiate with owners of private property they want to take. Somewhat more specific requirements apply to state agencies. A federal law governs federal agency use of eminent domain.

### Reimbursable costs

The Illinois Supreme Court has held that there is no general right for owners of property to be reimbursed for their attorneys’ fees in eminent domain suits. However, such fees can be awarded in two kinds of situations. The Code of Civil Procedure says that if a state or a local government is required by a court to start condemnation proceedings, and the court holds for the owner, the court is to make an award to reimburse the owner for the reasonable costs, including attorney’s fees, appraisal fees, and other expenses actually paid by the owner.

Another provision says that if the plaintiff in an eminent domain suit: (1) dismisses the complaint before the court enters an order; (2) fails to pay full compensation within the ordered time; or (3) cannot acquire the property by condemnation, then at the defendant’s request the court must order the plaintiff to pay the defendant’s costs, expenses, and reasonable attorney’s fees.

Federal law requires federal agencies that take an owner’s land by eminent domain to pay not only the value of what is taken, but also moving expenses; costs of discontinuing a business or farm operation; and reasonable costs to search for and open a replacement operation.

Illinois has no such comprehensive relocation law for all state and local agencies. But some laws on eminent domain have relocation provisions. As an example, the Secretary of

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Transportation and Director of Natural Resources are authorized to operate relocation programs and pay relocation costs.

#### *Quick-take proceedings*

The General Assembly has delegated the state's power of eminent domain to many kinds of political subdivisions, including counties; municipalities; airport and other transportation authorities; development authorities; and park, water, and sanitation districts, among others. The General Assembly has also authorized particular agencies, authorities, and localities to use so-called "quick-take" condemnation procedures. Quick-take allows a government to take title to property *before* a trial on compensation, and thus to use the property during the (often lengthy) time needed to determine the value.

After a government (that is authorized to use quick-take) has filed a condemnation suit, but before judgment, it can file a written motion seeking immediate title to the property. The court must set a date for a hearing. The court must determine, among other things, whether the power of eminent domain is being "improperly exercised." If the court finds a "reasonable necessity" to take the property, the court will hear evidence and make a preliminary finding of compensation.

That preliminary finding will be used to set a deposit or security from the plaintiff. If the plaintiff deposits that amount, the court must issue an order giving title to the plaintiff. If the former owner appeals and the plaintiff is found not to have quick-take authority, or the plaintiff dismisses the complaint or abandons the proceedings, the court must return title to the former owner. It must also require the plaintiff to pay damages for taking the property, along with the owner's costs, expenses, and attorney's fees.

#### *Urban redevelopment and "blighted areas"*

Illinois municipalities have been using eminent domain to create redevelopment districts in which private property is taken, then sold to private companies for redevelopment. Several provisions of the Illinois Municipal Code authorize municipalities to take property for commercial renewal and redevelopment, business district development and redevelopment, and tax increment allocation redevelopment.

#### **Court cases**

Illinois courts have said that determining whether a use is public is a judicial function. The courts have attempted to define "public use" in eminent domain cases; but that phrase cannot be precisely defined, and its meaning has widened somewhat over time.

The Illinois Supreme Court in 1903 and 1904 cases rejected arguments that helping the general economy is a public use. It said there is no requirement that the entire state, community, or other political subdivision share in the use or enjoyment of property taken; but if a use is local or limited, it must benefit a "considerable number of the inhabitants."

But in a line of cases starting in 1945, the Illinois Supreme Court held that taking private property to eliminate and redevelop slum areas is a public use of the property, even if the redevelopment will be done by private entities and even if the property will not stay under public ownership.

Later Illinois Appellate Court cases have followed those decisions. These cases expanded the scope of a "public use" in eminent domain cases. But it is significant that—at least in the view the courts took—the purpose of the taking was not only to make land

available for development, but also to eliminate conditions considered harmful: the existence of slums, or at least conditions making the land difficult or impossible to develop (such as tax liens and varied conditions of buildings on the land, making it difficult to assemble enough to make development economically rewarding).

Illinois courts have held that private property may not be taken by eminent domain for private use. On the other hand, they have allowed land to be taken by eminent domain and then sold for private development if it either (1) contained dilapidated housing or (2) had such fragmented ownership and problems with tax liens that it would have been difficult or impossible to buy enough of it to redevelop. In those two kinds of cases, a public agency had declared the land in its existing condition a threat to the public good. Thus the facts in those cases differed (at least in degree) from those in *Kelo*, in which the city plans to take desirable property so private interests can develop it further.

#### **State and Congressional Reactions**

##### *Illinois bill*

House Bill 4091 (E.Lyons-Stephens-Mitchell-Sacia-Munson et al.), introduced after the *Kelo* decision, would define "qualified public use" as public ownership and control by the state, local government, or a school district. It would prohibit use of quick-take powers for property that would be owned and controlled by private entities, even for economic development. It had its First Reading during the fall veto session and has 24 additional co-sponsors so far, but has not been assigned to a substantive committee.

##### *Other states' responses*

Legislators have introduced bills, resolutions, or proposed constitutional

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# Biographies of New Legislators

Several new legislators have been appointed since the beginning of the 94th General Assembly, to replace those who resigned or changed houses. Biographical sketches of them are below.

## New Senators



**Cheryl Axley (R-33, Mt. Prospect)** was appointed last September to replace Senator Dave Sullivan. She is a graduate of the University of Illinois and John Marshall Law School. After employment with Chicago and Northbrook firms, she now practices law in Mt. Prospect, concentrating in estates and real estate law. She has been a trustee of Elk Grove Township schools; was the Elk Grove township clerk for 14 years; and was an alternate delegate to the 2004 Republican National Convention. In the Senate she is the minority spokesperson on the Local Government Committee, and a member of the Transportation and Financial Institutions Committees.



**John J. Millner (R-28, St. Charles)** was appointed last July to replace Senator Kay Wojcik, after serving since 2003 in the House. He has a bachelor's degree from Lewis University and a master's in law enforcement administration from Western Illinois University. He rose from a patrolman on the Elmhurst police force to its Chief, serving 16 years in that position. He has written manuals and articles on law enforcement. His firm, John J. Millner & Associates, offers training seminars and consulting to police and other agencies. He is a past president of the Illinois Association of Chiefs of Police, and has been a member of many law-enforcement committees or organizations from the county to international levels. His Senate assignments are as minority spokesperson on the Senate State Government Committee, and a member of the Licensed Activities Committee and Pensions & Investments Committee.

## New Representative



**Harry R. Ramey, Jr. (R-55, Carol Stream)** was appointed in August to replace John J. Millner, who had moved to the Senate. He has a bachelor's degree in restaurant management from the University of Illinois. After being a manager in several restaurants, he was an out-reach representative for the Secretary of State from 1992 until his appointment to the House. He also is a Wayne Township trustee, and has been active in local, state, and national political campaigns. He is a member of the House Appropriations—Public Safety, Computer Technology, Consumer Protection, State Government Administration, and Transportation & Motor Vehicles Committees.

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## Eminent Domain: State Responses to *Kelo* (continued from p. 3)

amendments, or Governors have issued executive orders, in response to *Kelo* in at least 18 states:

Alabama	Michigan
California	Minnesota
Delaware	Missouri
Georgia	New Jersey
<b>Illinois</b>	New York
Ohio	Tennessee
Oregon	Texas
Pennsylvania	Virginia
Rhode Island	Wisconsin

At least six of those states have enacted laws on eminent domain since *Kelo*. An Alabama law prohibits municipalities from condemning property for commercial retail development. A Delaware law prohibits state agencies from using eminent domain except for “purposes of recognized public use” as described at least 6 months before beginning condemnation proceedings.

Ohio established a moratorium until 2007 on the use of eminent domain by the state or local governments to take private property without the owner’s consent unless the property is in a blighted area. A legislative task force will study use of eminent domain in Ohio. A new Texas law prohibits use of eminent domain for private benefit, and limits its use for eliminating blighted areas. A Missouri executive order created a task force to study use of eminent domain, define “public use,” and recommend bills on eminent domain. Legislative resolutions adopted in Rhode Island urge Congress and the states to “restore property owners’ rights” by statute and/or constitutional amendment.

Bills or resolutions in other states proposed to prohibit use of eminent domain for economic development, or for private benefit. Some would exempt blighted areas from those bans. A proposed California constitutional amendment to prohibit a private party from obtaining private property by eminent domain failed in committee. A Michigan resolution proposes that

a person whose principal residence is taken by eminent domain must get 125% of its fair market value. A New Jersey bill would prohibit use of eminent domain as part of a redevelopment project to condemn legally occupied property that meets housing codes. Several New York bills would require a local government to approve any proposed use of eminent domain to take private property for private use.

### *Congressional measures*

A House resolution, adopted 365-33 on June 30, 2005, expressed the House’s “grave” disapproval of *Kelo*. A Senate bill and two House bills introduced last June would restrict the power of eminent domain to public uses, and add that economic development is not such a use. Public Law 109-115 (2005) prohibits funds appropriated by that law to federal agencies from being used to take land as allowed by the *Kelo* decision. □

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## Abstracts of Reports Required to be Filed with General Assembly

The Legislative Research Unit staff is required to prepare abstracts of reports required to be filed with the General Assembly. Legislators may receive copies of entire reports by sending the enclosed form to the State Government Report Distribution Center at the Illinois State Library. Abstracts are published quarterly. Legislators who wish to receive them more often may contact the executive director.

### **Auditor General**

*Program Audit of Department of  
Human Services Inspector General,  
FY 2004*

The Office of the Inspector General revised its administrative rules and Investigative Directives by revising guidance on what constitutes abuse and neglect, no longer requiring serious injuries not involving abuse or

neglect to be reported, and requiring investigations to take place within 60 working days instead of 60 calendar days. Investigative staff decreased from 27 in FY 2002 to 22 in FY 2004. In FY 2004, 1,127 cases of abuse or neglect were reported, down from 1,398 in FY 2003. In FY 2004, 39% of investigations were investigated within 60 days, up from 30% in 2003.

Allegations were substantiated in 14% of investigations in FY 2004. Makes twelve recommendations to Inspector General: (1) provide clear investigative guidance to investigators; (2) require all serious injuries to be reported and clarify definitions so all cases of abuse and neglect are reported; (3) create interagency agreement with State Police to ensure requirements of Abused and Neglected Long Term Care Facility Residents Reporting Act are satisfied; (4) improve timeliness of investigations; (5) maintain necessary documentation to monitor referrals to State Police; (6) develop time requirements for interviews with alleged perpetrator, victim, and witnesses; (7) develop electronic case management system;

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# Cities Try Various Ways to Control Dangerous Dogs (continued from p. 1)

in a way that can reasonably be interpreted as seriously threatening a person or pet, or bites a person without justification. A county administrator, following procedures in the Act, can declare a dog to be dangerous, subject to appeal. In such a case the owner must pay a \$50 public safety fine to the Pet Population Control Fund; and the dog is sterilized, must have an identifying microchip implanted, and may have to be professionally evaluated and/or be kept under adult supervision (and even muzzled) when in public places. The owner must pay for these actions. Knowingly or recklessly allowing a “dangerous dog” to leave the owner’s premises without a leash or other control is a misdemeanor. Public Act 94-639 (2005), enacted by H.B. 315 (Burke-Brosnahan-Holbrook-Fritchey-Feigenholtz et al.—Harmon-Geo-Karis-Dahl et al.) added to the definition the criterion that the dog has bitten someone without justification, and added the \$50 fine.

At least 28 states have laws authorizing local animal-control officers to take action against dangerous dogs without regard to breed. The laws of 17 of those states also specifically authorize breed-specific local ordinances:

Alaska	Maryland	North Carolina
Arizona	Massachusetts	Rhode Island
Connecticut	Montana	South Carolina
Delaware	Nevada	South Dakota
Idaho	New Hampshire	Washington
West Virginia		
Wyoming		

The other 11 of those states, including Illinois, ban breed-specific ordinances:

Colorado	New Jersey	Virginia
Florida	New York	
<b>Illinois</b>	Oklahoma	
Maine	Pennsylvania	
Minnesota	Texas	

Despite those laws, some localities in those 11 states have ordinances banning pit bulls. The validity of such ordinances is sometimes challenged, as described later.

Two other states take different approaches. California allows local governments to require sterilization or regulate the breeding of specific breeds of dogs, but does not allow a breed to be declared potentially dangerous or vicious.

Ohio appears to have the only statewide dangerous-dog law applying to a specific breed. It defines a “vicious dog” as either a pit bull or a dog that has killed or seriously injured a person or another dog. It says that owners of dangerous or vicious dogs must confine or leash them at all times, and must keep insurance for at least \$100,000 against damage or injury caused by their dogs. But the Ohio Supreme Court in 2004 held that the requirements to confine and insure dangerous or vicious dogs unconstitutionally denied due process to owners. The law did not allow them to appeal a state determination that their dogs were dangerous or vicious. A bill to delete the mention of pit bulls from the law was introduced last spring, but the committee to which it was assigned took no action.



Picture by Debbie Sikes

## Ordinances

Searches of several databases of selected localities’ ordinances found 22 banning pit bulls in 14 states. But 18 of them have so-called “grandfather clauses” allowing persons who had pit bulls before enactment to keep them under stated conditions. Those conditions typically include some of the following: special licenses or registration of pit bulls; liability insurance in at least specified amounts; use of photographs, tattoos, or microchips for future identification of dogs; confinement, or leashing or muzzling, at all times; posting of warning signs around places where pit bulls are kept; and spaying or neutering, or removal of any pups from the municipality after weaning.

Some municipalities ban pit bulls even *without* exempting those already owned. Examples are Wheeling, Illinois; Arkansas City, Kansas; Fairfield, Ohio; and Yakima, Washington. Wheeling prohibits keeping vicious or dangerous animals inside its limits. Pit bull terriers are included in the definition of vicious or dangerous animals. Those other three cities ban pit bulls within their limits. However, Yakima allows exemptions for the following categories of pit bulls: (1) those not living within the city; (2) those in the city for a dog show or dog sporting event; and (3) those that are in the city for less than 96 hours. (The ordinances found are listed in the sidebar on the next page.)

## Pit Bull Ordinances With No Grandfather Clauses

<i>Locality</i>	<i>Locality</i>
Wheeling, Illinois	Fairfield, Ohio
Arkansas City, Kansas	Yakima, Washington

## Pit Bull Ordinances With Grandfather Clauses

<i>Locality</i>	<i>Locality</i>
Irondale, Alabama	Liberty, Missouri
Denver, Colorado	Devils Lake, North Dakota
Miami-Dade County, Florida	Cincinnati, Ohio
Council Bluffs, Iowa	Mansfield, Ohio
Salina, Kansas	Midwest City, Oklahoma
Alma, Michigan*	Pawtucket, Rhode Island
Hudsonville, Michigan	Cambridge, Wisconsin
Waterford, Michigan	Hewitt, Wisconsin
Ferguson, Missouri	South Milwaukee, Wisconsin

\* The Alma ban applies to vicious dogs. But it says that unless proven otherwise, a pit bull is presumed vicious and thus subject to the ban.

### Court Cases

Some “pit bull” ordinances have been challenged in court. Plaintiffs often argue that the term “pit bull” is unconstitutionally vague. (The term reflects the fact that the dogs are descended from dogs used in the practice of “bull baiting” in England until it was banned 180 years ago.) There are four recognized pit bull breeds (Bull Terriers, Staffordshire Bull Terriers, American Pit Bull Terriers, and American Staffordshire Terriers). Also, some dogs are only partly of those breeds, making the application of pit bull bans to them uncertain. The ordinances typically list the four breeds; they may also be drafted to apply to breeds commonly known as “pit bulls,” and to mixed-breed dogs having predominant characteristics of any of the four breeds. Some ordinances also specify that they apply to dogs conforming to American Kennel Club (AKC) or United Kennel Club (UKC) standards for any of the named breeds.

In most cases, courts have upheld local powers to protect public safety against dogs. In a 1989 case challenging a Miami-Dade County pit bull ban, the American Dog Owners Association argued that the term “pit bull” as used in the ordinance was meaningless. A federal judge rejected that claim, saying the plaintiffs’ own expert witnesses had written articles referring to pedigreed dogs as “pit bulls.” Also, when shown photographs of dogs, these experts identified some as “pit bulls” without specifying their breeds. Finally, the witnesses testified that owners usually know what breed of dog they have. The court said that persons of ordinary intelligence can read and understand the descriptions by the AKC or the UKC. The court added that animal control officers could use the ordinance’s standards, breed books, visual aids, and their own professional judgment to determine whether a dog is a pit bull. The case was not appealed to the U.S. Court of Appeals in Atlanta.

The American Dog Owners Association sued the city of Yakima, Washington in the state courts, challenging its ban on pit bulls as unconstitutionally vague. The Washington Supreme Court in 1996 held that the ordinance was not unconstitutionally vague, because persons of ordinary intelligence would be able to understand which breeds were prohibited. Also, because the ordinance mentions four specific breeds, it clearly refers to dogs conforming to the professional standards for those dogs. The court also held that the ordinance was construed so as to prevent animal control officers from arbitrarily enforcing it.

Local bans on pit bulls are also sometimes challenged where state law specifically prohibits “breed-specific” ordinances. For example, 15 years after Denver enacted a pit bull ban in 1989, Colorado banned municipal ordinances specific to particular breeds. Denver challenged that law, citing home-rule powers and also arguing that its breed-specific ban was constitutionally justified by differences between pit bulls and other breeds. A trial judge held for the city last spring, based on home rule and his conclusion that the state had not shown that banning pit bulls by name was scientifically unjustified.

A computer search for other cases on dangerous dog laws found that most have upheld the constitutionality of dangerous dog ordinances. They held that the ordinances were not unconstitutionally vague, an unreasonable exercise of municipal power, or a violation of due process. □

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# “Price Gouging” Laws Vary Widely

Spikes in gasoline and diesel fuel prices after last fall’s hurricanes disrupted supplies of petroleum products brought renewed interest in restricting prices at such times. Many states have laws imposing temporary price restrictions, either on petroleum products alone or on a broader class including those products.

These laws do not reflect any common meaning of the term “price gouging” that is sometimes used at times of scarcity. They typically use terms such as “gross disparity” or “unconscionable” or “unreasonably excessive” to describe prices to which they apply. The Illinois Attorney General (citing the Illinois act on consumer fraud as authority) last September issued a regulation against “unconscionably high” petroleum prices when petroleum markets are disrupted. In late December her office threatened to sue 18 gasoline stations for allegedly charging such prices.

## States’ Laws

Laws of several populous or nearby states on pricing during times of shortage, that apply either to petroleum retailing or to a class that includes such retailing, are summarized below. Several states are reported to be considering bills on the subject in the wake of last fall’s hurricanes.

### California

For 30 days after the Governor proclaims a state of emergency due to a natural or man-made disaster, a merchant is prohibited from selling goods or services needed to respond to the emergency at more than 10% above what the merchant charged immediately before the proclamation—unless the merchant can prove that the increase was directly attributable to higher costs for goods, materials, or labor.

### Florida

The law presumes that a price charged for a commodity is “unconscionable” if it shows a “gross disparity” to prices charged in the last 30 days before the Governor declared a state of emergency—unless the seller can show that the increase is due to “additional costs” or “national or international market trends.” Public or private actions may be brought to declare a price “unconscionable.” The law exempts growers and processors of food products, except when selling at retail.

### Georgia

In an area where the Governor has declared a state of emergency, and while that declaration remains in effect, it is declared to be an “unlawful, unfair, and deceptive trade practice” to charge a price higher than was charged (apparently by the same seller) just before the state of emergency, except for increases reflecting the seller’s cost of goods, services, or transportation. (For lumber products only, the law specifically mentions that a seller can increase prices as needed to replenish its supply at current market prices.) A state official can bring suits in court charging violations.

### Indiana

It is illegal to charge an “unconscionable” amount for fuel, described as selling for an amount that “grossly exceeds” its average price in the area during the last 7 days before the Governor declares an emergency, unless the increase is due to things such as the retailer’s replacement costs, taxes, and transportation costs. Interestingly, the law purports to ban the charging of such prices during the 24 hours *before* the Governor declares an emergency.



### Michigan

A list of commercial actions that are declared to be “unfair, unconscionable, or deceptive” includes “[c]harging the consumer a price that is grossly in excess of the price at which similar property or services are sold.” The state Attorney General can seek an injunction against such actions.

### New Jersey

During a state of emergency declared by the President, Governor, or a municipal emergency management coordinator, a price is declared to represent an “excessive price increase” if it is more than 10% above what the seller charged in the usual course of business (presumably excluding reduced-price sales) immediately before the state of emergency, unless it reflects the seller’s additional costs. An “excessive price increase” in any merchandise used for personal safety, health, or comfort is prohibited in an area where an emergency has been declared, during the emergency and for 30 days thereafter.

### New York

During an “abnormal disruption” of markets resulting in a declaration of emergency by the Governor, it is illegal to charge an “unconscionably excessive” consumer price. A court must decide whether a price fits that description based on whether there is an “unconscionably extreme” excess in price and/or “unfair leverage or unconscionable means” used. The court is to consider any “gross disparity”

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between prices before and after the “abnormal disruption” in making that determination.

#### *North Carolina*

During a declared state of disaster, “unreasonably excessive” prices for products used to protect or preserve life, health, safety, or comfort are prohibited. The following are to be considered in determining whether a price is “unreasonably excessive”: (1) whether it is due to increased costs to the seller, and (2) whether the seller “offered to sell or rent the merchandise or service at a price that was below the seller’s average price in the preceding 60 days before the state of disaster.”

#### *Texas*

It is declared to be a false, misleading, or deceptive act to sell products, including fuel, at an “exorbitant or excessive” price during a disaster declared by the Governor. Consumers can sue merchants under this prohibition.

#### **Illinois Regulation**

In September 2005 the Attorney General’s office issued an emergency rule (which it proposed to make permanent) declaring it an “unfair or deceptive act or practice” for a petroleum-related business to ask an “unconscionably high price” for a petroleum product when petroleum markets are disrupted. The quoted term was defined as applying if there is a “gross disparity” between the

price asked and either (a) the price at which the business sold the product immediately before the disruption or (b) a price at which it is readily available in the trade area—unless the new price is due to higher costs of supply or other increased costs to the seller. The office cited the Consumer Fraud and Deceptive Business Practices Act’s prohibition on “[u]nfair methods of competition and unfair or deceptive acts or practices . . .” as the substantive authority for the rule. The emergency rule expires 150 days after issuance. In December the Attorney General’s office asked the General Assembly’s Joint Committee on Administrative Rules to review the proposed permanent rule. □

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## **Abstracts of Reports Required to be Filed With General Assembly**

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(8) continue to work with state agencies to ensure timely reporting of cases; (9) send all community agencies copies of Community Agency Protocol and training manuals; (10) develop ongoing training program; (11) work with Governor’s office to get members appointed to Board and ensure that the Quality Care Board meets quarterly; and (12) ensure that its annual report is submitted on time. (210 ILCS 30/6.8; Dec. 2004, 100 pp.)

#### **Board of Education**

*Waivers of school code mandates, Spring 2005*

Summary chart classifies 180 applications for waivers and modifications into 19 general categories and lists their status: Administration of Medication (1 withdrawn or returned); Bids-Real Estate (1 approved); Certificate (1 approved); Content of

Evaluations Plans (1 transmitted to GA); Driver Education (2 approved, 16 transmitted to GA, 2 withdrawn or returned); Course Requirements (1 transmitted to GA); Educational Service Center Administration (1 transmitted to GA); Instructional Time (2 transmitted to GA); Legal School Holidays (77 approved); Limitation of Administrative Costs (13 transmitted to GA, 1 withdrawn or returned); Nonresident Tuition (5 transmitted to GA); Parent-Teacher Conferences (10 transmitted to GA, 1 withdrawn or returned); Physical Education (1 approved, 22 transmitted to GA, 1 withdrawn or returned); PSAE - Instructional Time (4 approved); School Improvement/Inservice Training (8 transmitted to GA); Substitute Teachers (3 transmitted to GA, 2 withdrawn or returned); Tax Levies (1 transmitted to GA); Treasurer (1 transmitted to GA); Vocational Education (2 approved). Section I summarizes the 84 requests transmitted to the General Assembly. Section II summarizes the 88 applications approved by the

State Board. Section III describes the 8 requests returned to the applicants, either because the action is already permissible, or ineligible under the law. Section IV lists all applications numerically by Senate and House districts. (105 ILCS 5/2-3.25g; April 2005, 55 pp. + executive summary)

#### **Board of Higher Education**

*Public university tuition and fee waivers, FY 2004*

Public universities issued 41,560 waivers worth \$219.4 million (compared to 43,366 waivers worth \$198.4 million in FY 2003). Of that, 17.2% was for undergraduates and 82.8% was for graduates; 90.6% was discretionary (such as graduate teaching and research assistantships). (110 ILCS 205/9.29; Dec. 2004, 3 pp. + 2 tables, 2 appendices)

#### **Central Management Services, Dept. of**

*Annual report summary, 2005*

Lists 18 state agencies printing annual reports through CMS or outside

*(continued on p. 10)*

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## Abstracts of Reports Required to be Filed With General Assembly

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printers. Agencies printed 34,275 copies for \$75,888. The Department of Human Services printed the most copies, 10,000. (30 ILCS 500/25-55; Jan. 2005, 2 pp.)

### *State employee child care centers annual report, 2004*

The state oversees three privately run on-site child care centers for employees' children, in Chicago, Springfield, and Kankakee. Chicago's Child Development Center in the State of Illinois Building is managed by Early Child Care Services, Inc., and is accredited by the National Association for the Education of Young Children. It is licensed for 78 children but limits enrollment to 66. The center provides full-time care for children ages 2 through kindergarten, and three full-time teachers staff each of the four classrooms, with an average of 16 children per classroom. Springfield's child care center has been located in the Department of Revenue Building for 19 years. For the last 10 years it has been operated by Bright Horizons Family Solutions. Kankakee's Learning Milestones, Inc., in the Shapiro Center serves children from 6 weeks to 13 years. The center is licensed by the Department of Children and Family Services to provide extended hours (until midnight) of care as needed. The Dependent Care Assistance Program allows employees to pay for child care with tax-free dollars by using flexible spending accounts. In FY 2004, 1,378 employees participated in the program with contributions totaling over \$5 million. (30 ILCS 590/3; Dec. 2004, 4 pp.)

### *Supported Employment Program (SEP) annual report, FY 2004*

The SEP helps state agencies to

employ people with severe physical or mental disabilities. As of December 2004, there were 14 SEP employees: 6 at the Department of Human Services, 3 each at the Departments of Children and Family Services and Transportation, and 1 each at the Prisoner Review Board and Department of Central Management Services. (5 ILCS 390/9; Dec. 2004, 2 pp.)

### **Commerce Commission**

#### *Competition in Illinois retail electric markets, 2004*

Non-coincidental peak demand was 27,032 megawatts, a considerable decrease compared to 29,906 in 2003. The Alternative Retail Electrical Suppliers (ARES) accounted for 18.5% of all electric utilities sales. Ten Retail Electric Suppliers sold power and energy to retail customers, two fewer than 2003. (220 ILCS 5/16-120(b); April 2005, 11 pp. + tables)

### **Commerce and Economic Opportunity, Dept. of**

#### *First Stop Business Information Center annual report, 2003*

The Center is a statewide resource for businesses with questions about state and federal requirements, regulatory processes, and assistance. In 2003 the Center helped 18,136 clients; issued 7,011 business startup kits; and answered questions for 7,192 clients on license and registration, 1,699 on financial sources, 241 on regulatory assistance, 145 on market research, and 134 on government contracting. The Center analyzes the impact of state law on small businesses. (20 ILCS 608/15(q); Sept. 2004, 12 pp.)

### **Corrections, Dept. of**

#### *Adult and juvenile facilities quarterly report, Jan.-Mar. 2005*

Department had 44,337 residents in adult facilities on February 28, 2005, versus capacity of 33,798. Average ratio of security staff to inmates was 0.199. Prisoners were 10% single celled, 66% double celled, and 24%

multi-celled. Adult population was projected at 46,172 by March 2006. Department had 1,414 in juvenile facilities on February 28, 2005. Average ratio of security staff to juveniles was 0.625. Juvenile population was projected at 1,498 by March 2006. (730 ILCS 5/3-5-3.1; April 2005, 23 pp.)

### **Housing Task Force**

#### *Illinois' Comprehensive Housing Plan, 2005*

In FY 2005, \$299.6 million from federal, state, and private funds will be used to assist 2,840 multi-family housing units: 45% for low-income family housing, 25% for seniors, 15% for people with disabilities, and 15% for the homeless. In FY 2005, \$279.9 million from federal and state funds will be used to assist 4,209 single-family housing units: 50% for low-income family housing, 25% for seniors, and 25% for people with disabilities. (Executive Order 18 (2003); Jan. 2005, 43 pp.)

### **Insurance, Dept. of**

#### *Insurance cost containment annual report, 2002*

Illinois property-casualty insurers experienced a 75.2% overall loss ratio on direct earned premiums in 2002, down from 81.1% in 2001. The U.S. average for 2002 was 68.8%. The total value of direct written premiums in Illinois was \$19.4 billion in 2002, representing 4.6% of the nationwide total. Among the states, Illinois ranked 5<sup>th</sup> in value of direct written premiums. By category, Illinois' direct earned premiums in 2002 were: homeowner's \$1,542.0 million (67.7% loss); private passenger auto \$5,199.0 million (64.8% loss); commercial auto \$754.6 million (68.4% loss); medical malpractice \$431.9 million (156.5% loss); and general liability \$2,207.2 million (97.6% loss). (215 ILCS 5/1202 (d); Apr. 2004, 50 pp. + 6 appendices)

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## **Integrated Justice Information System Implementation Board**

*Annual report, 2005*

The Illinois Integrated Justice Information System (IJIS) was established in 2003 to promote the sharing of justice information. Professional staff support is located at the Illinois Criminal Justice Information Authority in Chicago. Additional staff support is provided by the State Police. The Board's Planning and Policy Committee began developing a privacy policy, with the first phase to be presented in May 2005. The Homeland Security Workgroup is developing a scenario to prevent and respond to homeland security events. The Technical Committee recommended three sets of justice exchange standards. The Outreach Committee developed the first electronic issue of the IJIS newsletter. The Funding Committee is identifying potential sources of revenue. An assessment by the IJIS Institute and SEARCH was completed in 2004. Recommendations include putting state court members on the board, reducing board size, establishing an operational/user committee that studies and understands current justice operations, developing technology standards, and creating a project management office. The Board's responses to these recommendations are included in the report. (25 ILCS 5/3.1; undated, rec'd March 2005, 22 pp.)

## **Interagency Coordinating Council**

*Annual report, 2003*

The Interagency Coordinating Council (ICC) assists state and local agencies to improve services for transition-age youth with disabilities. ICC members and numbers of disabled youth served in FY 2003 were: Community College Board, 10,683; Department of Children and Family Services identified and provided services to 2,600 wards with developmental disabilities; Department of Corrections, 2,862; Department of Employment Security

placed 343 of 15,308 disabled persons registered with the Department; Department of Human Services Division of Developmental Disabilities, 4,300; Department of Human Services Division of Rehabilitation Services, 17,907; Department of Public Aid, 1,050,000 through Medicaid and KidCare Program; State Board of Education, 96,526 special education students ages 14-21; and UIC Division of Specialized Care for Children, 2,504 youth ages 14-21 with special health care needs. ICC recommendations include more training for persons serving students with disabilities; periodic review of transition interagency agreements; and creating a statewide service delivery system for transition age youth. (20 ILCS 3970/5; Nov. 2004, 33 pp. + 3 attachments)

## **Legislative Audit Commission**

*Annual report, 2004*

Commission reviewed and acted on 160 financial/compliance audits and 5 performance audits. No special audits were requested in 2004. The five performance audits were on: (1) expenditures from the Grade Crossing Protection Fund; (2) regulation of grain dealers and warehousemen and administration of the Grain Insurance Fund; (3) Department of Central Management Services' administration of the state's Space Utilization Program; (4) Illinois Aquaculture Development Fund; and (5) village of Robbins' use of municipal economic development funds. It reviewed 143 emergency purchases, monitored quarterly reports of the 10 travel control boards, and audited the Auditor General's Office. (25 ILCS 150/3; Mar. 2005, 36 pp.)

## **Motor Vehicle Theft Prevention Council**

*Annual report, 2004*

Total FY 2004 revenue was \$6.52 million, expenditures \$5.39 million. Total 2005 grant awards were \$5.73 million. Eighty-four percent of stolen vehicles were recovered in an average

19 days in 2003. Since the Council's inception in 1991, arrests have declined 4%, annual motor vehicle theft offenses declined 44%, annual theft rate declined 49%, and Illinois dropped to 8<sup>th</sup> (previously 7<sup>th</sup>) in state rankings for motor vehicle thefts. (20 ILCS 4005/7(g); March 2005, 21 pp.)

## **Public Aid, Dept. of**

*Medical Assistance Program annual report, FY 2004*

DPA spent over of \$7 billion on health benefits in FY 2004; 1.9 million people were served in an average month. Over 200,000 participants enrolled in the SeniorCare prescription drug benefit program. The Health Benefits for Workers with Disabilities Program provided Medicaid coverage to 592 employed people with disabilities. KidCare enrollment has continued to grow. At the end of FY 2004, there were 38 Supportive Living Facilities, with a total of 2,939 apartments. In FY 2004 there were 33.8 million medical claim receipts without prescriptions, compared to 32.6 million in FY 2003 and 29.6 million in FY 2002. DPA paid for long-term care for over 57,000 people in an average month in 768 nursing care facilities. Graphs and tables give detailed information on 2002-2004 trends. (305 ILCS 5/5-5 and 5/5-5.8; undated, rec'd April 2005, 74 pp.)

## **Revenue, Dept. of**

*Merger summary of Department of the Lottery, Liquor Control Commission, and Illinois Racing Board with Department of Revenue*

Executive Order 9 (2003) merged the Lottery Department and the administrative functions of the Racing Board and the Liquor Control Commission with the Department of Revenue, effective June 1, 2003. As a result, 4 positions with the Liquor Control Commission, 21 positions with the Lottery, and 4 positions with the Racing Board (total of 29) were eliminated with a

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## Abstracts of Reports Required to be Filed With General Assembly

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savings of \$2.1 million. Seven lottery district sales offices were moved to Department of Revenue. This will result in lease savings of \$991,310 beginning in FY 2005. (15 ILCS 15/11; Nov. 2004, 5 pp.)

*Report on tax filing deadlines, 2004*  
Department of Revenue compared Illinois tax filing deadlines to federal

tax filing deadlines for 2004. The Department found that all federal and state tax filing deadlines are the same. (H.Res. 760 (2004), March 2005, 2 pp.)

### State Employees' Retirement System

*Social Security Program biennial report, 2004*

At 2004 yearend, 4,552 local governments extended Social Security to employees; 3,149 of them were also under the Illinois Municipal Retirement Fund. Chicago and Cook County employees are under other retirement systems and do not participate in Social Security. (40 ILCS 5/21-120; undated, rec'd Apr. 2005; 10 pp.)

### Tollway Authority

*Annual report, 2004*

Toll revenues in 2004 were \$385 million. Total revenue (including concessions, fines, and miscellaneous) was \$408 million. Total expenditures for 2004 were \$408 million. Traffic averaged more than 1.3 million vehicles per day on 274 miles of road. There were 12 public hearings to take public comments on the Open Roads congestion relief plan. The plan was supported by a margin of 3 to 1. As a part of the plan, 90% of tollway road will be rebuilt/restored. Numerous construction plans are underway, including the extension of I-355 South. I-Pass sales hit a record of more than 329,000 transponders sold in December of 2004 alone. (605 ILCS 10/23; undated, rec'd May 2005, 13 pp.)

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## FIRST READING

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