

August 18, 2009

To the Honorable Members of the Illinois Senate,
96th General Assembly:

In accordance with Article IV, Section 9(e) of the Illinois Constitution, I hereby return Senate Bill 51 with specific recommendations for change.

Senate Bill 51 is a major overhaul of the manner in which our state procures goods and services. The abuse of state procurement has been a consistent feature of corruption scandals involving high-ranking officials of Illinois government. I commend the members of the General Assembly for passing this landmark reform.

Although I support fundamental principles that this legislation embodies, my post-session review of the bill has revealed subtle but significant problems in the bill that require modification.

Foremost among these is the requirement that the Chief Procurement Officer for the Illinois Department of Transportation (IDOT) be appointed by the Executive Ethics Commission (EEC). The purpose of mandating EEC appointment for chief procurement officers was to help insulate procurement from undue political influence. Unfortunately, removing IDOT procurement from the jurisdiction of the Secretary of Transportation runs afoul of Federal law, thereby jeopardizing federal matching funds for transportation projects. The solution I propose is for the Secretary to nominate the Chief Procurement Officer, with the consent of the EEC. The federal government has confirmed that with this change, IDOT procurement will conform to federal law, eliminating any risk to our continued receipt of federal funds.

Another serious issue is the effective date of the bill. As drafted, it is unclear whether and to what extent the new rules of procurement would apply to procurements pending on the effective date of the bill. My specific recommendation for change would move the effective date to July 1, 2010, and create a clear standard for determining when and to which procurements the new rules apply. This will allow for the efficient implementation of the new procurement rules.

Because the new structure for procurement will insulate procurement officials from undue political influence, a number of employees currently employed by the agencies they serve will move to a separate payroll. This administrative change, though appropriate, gives rise to a number of ambiguities about how the Personnel Code and the personnel-related administrative rules apply to these employees. My recommendations resolve these ambiguities.

Therefore, pursuant to Article IV, Section 9(e) of the Illinois Constitution of 1970, I hereby return Senate Bill 51, entitled "AN ACT concerning State government." with the following specific recommendations for change:

on page 9, immediately below line 23, by inserting the following:

"Section 95-12. The Personnel Code is amended by changing Section 4c as follows:

(20 ILCS 415/4c) (from Ch. 127, par. 63b104c)

Sec. 4c. General exemptions. The following positions in State service shall be exempt from jurisdictions A, B, and C, unless the jurisdictions shall be extended as provided in this Act:

- (1) All officers elected by the people.

(2) All positions under the Lieutenant Governor, Secretary of State, State Treasurer, State Comptroller, State Board of Education, Clerk of the Supreme Court, Attorney General, and State Board of Elections.

(3) Judges, and officers and employees of the courts, and notaries public.

(4) All officers and employees of the Illinois General Assembly, all employees of legislative commissions, all officers and employees of the Illinois Legislative Reference Bureau, the Legislative Research Unit, and the Legislative Printing Unit.

(5) All positions in the Illinois National Guard and Illinois State Guard, paid from federal funds or positions in the State Military Service filled by enlistment and paid from State funds.

(6) All employees of the Governor at the executive mansion and on his immediate personal staff.

(7) Directors of Departments, the Adjutant General, the Assistant Adjutant General, the Director of the Illinois Emergency Management Agency, members of boards and commissions, and all other positions appointed by the Governor by and with the consent of the Senate.

(8) The presidents, other principal administrative officers, and teaching, research and extension faculties of Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, the Illinois Community College Board, Southern Illinois University, Illinois Board of Higher Education, University of Illinois, State Universities Civil Service System, University Retirement System of Illinois, and the administrative officers and scientific and technical staff of the Illinois State Museum.

(9) All other employees except the presidents, other principal administrative officers, and teaching, research and extension faculties of the universities under the jurisdiction of the Board of Regents and the colleges and universities under the jurisdiction of the Board of Governors of State Colleges and Universities, Illinois Community College Board, Southern Illinois University, Illinois Board of Higher Education, Board of Governors of State Colleges and Universities, the Board of Regents, University of Illinois, State Universities Civil Service System, University Retirement System of Illinois, so long as these are subject to the provisions of the State Universities Civil Service Act.

(10) The State Police so long as they are subject to the merit provisions of the State Police Act.

(11) (Blank).

(12) The technical and engineering staffs of the Department of Transportation, the Department of Nuclear Safety, the Pollution Control Board, and the Illinois Commerce Commission, and the technical and engineering staff providing architectural and engineering services in the Department of Central Management Services.

(13) All employees of the Illinois State Toll Highway Authority.

(14) The Secretary of the Illinois Workers' Compensation Commission.

(15) All persons who are appointed or employed by the Director of Insurance under authority of Section 202 of the Illinois Insurance Code to assist the Director of Insurance in discharging his responsibilities relating to the rehabilitation, liquidation, conservation, and dissolution of companies that are subject to the jurisdiction of the Illinois Insurance Code.

(16) All employees of the St. Louis Metropolitan Area Airport Authority.

- (17) All investment officers employed by the Illinois State Board of Investment.
- (18) Employees of the Illinois Young Adult Conservation Corps program, administered by the Illinois Department of Natural Resources, authorized grantee under Title VIII of the Comprehensive Employment and Training Act of 1973, 29 USC 993.
- (19) Seasonal employees of the Department of Agriculture for the operation of the Illinois State Fair and the DuQuoin State Fair, no one person receiving more than 29 days of such employment in any calendar year.
- (20) All "temporary" employees hired under the Department of Natural Resources' Illinois Conservation Service, a youth employment program that hires young people to work in State parks for a period of one year or less.
- (21) All hearing officers of the Human Rights Commission.
- (22) All employees of the Illinois Mathematics and Science Academy.
- (23) All employees of the Kankakee River Valley Area Airport Authority.
- (24) The commissioners and employees of the Executive Ethics Commission, except for those employees appointed under the changes made to the Illinois Procurement Code by this amendatory Act of the 96th General Assembly.
- (25) The Executive Inspectors General, including special Executive Inspectors General, and employees of each Office of an Executive Inspector General.
- (26) The commissioners and employees of the Legislative Ethics Commission.
- (27) The Legislative Inspector General, including special Legislative Inspectors General, and employees of the Office of the Legislative Inspector General.
- (28) The Auditor General's Inspector General and employees of the Office of the Auditor General's Inspector General."; and

on page 31, line 16, by deleting "and"; and

on page 31, by replacing line 18 with "Section 5-15 of the Civil Administrative Code of Illinois, and any other agency, board, or commission designated by the Executive Ethics Commission and"; and

on page 33, by replacing lines 7 through 11 with "chief internal auditor of a State agency in accordance with applicable provisions of the Personnel Code, personnel rules, and bargaining agreements. A chief internal auditor transferred or appointed under this amendatory Act of the 96th General Assembly shall be an employee of the State agency to which he or she was transferred or appointed. All other audit staff shall be transferred to State agencies at the direction of the Director of Central Management Services. A chief internal auditor transferred or appointed under this amendatory Act of the 96th General Assembly shall be appointed to a 5-year term beginning on the date of the appointment."; and

on page 33, by replacing line 22 with "executive officer of that State agency in coordination with the Director of Central Management Services. Unexpended appropriations shall be transferred at the direction of the Director of the Governor's Office of Management and Budget."; and

on page 34, by replacing lines 13 through 19 with the following:

"degree, in accordance with the Personnel Code, personnel rules, and applicable bargaining agreements who is:

(1) a certified internal auditor, a certified public accountant, or a certified information system auditor;

(2) an individual with at least 5 years of experience conducting audits in units of government or fields related to the activities of the State agency that he or she is appointed to; and

(3) an individual who possesses at least 2 years of supervisory experience in conducting audits in units of government or fields related to the activities of the State agency that he or she is appointed to.

If the chief internal auditor appointed pursuant to this Section is an audit staff employee transferred under this amendatory Act of the 96th General Assembly, he or she shall meet the requirements of this subsection (a) within 18 months from the date of his or her appointment. ~~degree, who is either:~~

~~(1) a certified internal auditor by examination or a certified public accountant and who has at least 4 years of progressively responsible professional auditing experience; or~~

~~(2) an auditor with at least 5 years of progressively responsible professional auditing experience.";~~ and

by replacing line 20 of page 35 through line 17 on page 36 with the following:

"Sec. 1-15.15. Chief Procurement Officer. "Chief Procurement Officer" means:

(1) for procurements for construction and construction-related services committed by law to the jurisdiction or responsibility of the Capital Development Board, the independent chief procurement officer appointed by a majority of the members of the Executive Ethics Commission ~~the executive director of the Capital Development Board.~~

(2) for procurements for all construction and ~~construction-related~~ services, operation of any facility, and the provision of any construction or construction related service or activity committed by law to the jurisdiction or responsibility of the Illinois Department of Transportation, including the direct or reimbursable expenditure of all federal funds for which the Department of Transportation is responsible or accountable for the use thereof in accordance with federal law, regulation, or procedure, the independent chief procurement officer appointed by the Secretary of Transportation after the consent of the majority of the members of the Executive Ethics Commission.

(3) for all procurements made by a public institution of higher education, the independent chief procurement officer appointed by a majority of the members of the Executive Ethics Commission ~~a representative designated by the Governor.~~

(4) (Blank) ~~for all procurements made by the Illinois Power Agency, the Director of the Illinois Power Agency.~~

(5) for all other procurements, the independent chief procurement officer appointed by a majority of the members of the Executive Ethics Commission. ~~the Director of the Department of Central Management Services.";~~ and

on page 38, line 5, by replacing "or another subcontractor" with "or another subcontractor who directly provides"; and

on page 38, line 9, by replacing "State agency." with "State agency. However, "subcontract" does not include any subcontract for procurements identified in Section 1-15.15(a) of the Procurement Code with a value of \$25,000 or less."

on page 38, by replacing line 20, with "procured by the State. The Board shall assist the Executive Procurement Officer in developing and recommending"; and

on page 38, line 21, by deleting "to recommend"; and

on page 43, line 13, by replacing "officer." with "officer and shall be an employee of the Executive Ethics Commission. A State purchasing officer may be assigned to one or more agencies."; and

on page 43, line 17, by replacing "enter into contracts for" with "approve contracts prior to execution by"; and

on page 45, line 12, by replacing "officer." with "officer and shall be an employee of the Executive Ethics Commission. A procurement compliance monitor may be assigned to one or more agencies."; and

on page 47, line 9, by inserting after "appoint", "or approve as provided for by this amendatory Act of the 96th General Assembly"; and

on page 47, line 23, by inserting after "procedure", ";the chief procurement officer recommended for approval under this item appointed by the Secretary of Transportation after consent by the Executive Ethics Commission"; and

on page 49, immediately below line 12, by inserting the following:

"(e) The rights of employees in State agencies that are engaged in purchasing activities on the effective date of this amendatory Act of the 96th General Assembly under the Personnel Code and applicable collective bargaining agreement or under any pension retirement or annuity plan shall not be affected by this amendatory Act of the 96th General Assembly. Those employees shall remain employees of the agencies in which they are employed on the effective date of this amendatory Act of the 96th General Assembly. The employees shall continue to be located in the State agency where they are located on the effective date of this amendatory Act of the 96th General Assembly or later assigned.

(f) All pending business on the effective date of this amendatory Act of the 96th General Assembly pertaining to the contracts, powers, duties, rights and responsibilities is transferred by this amendatory Act from the chief procurement officers on the effective date of this amendatory Act to the new chief procurement officers. Chief procurement officers on the effective date of this amendatory Act shall retain their powers and duties until a new chief procurement officer is appointed."; and

on page 64, line 12, by inserting after "contract.", "Nothing in this Section shall be construed to prohibit the State from accepting rebates, discounts, or marketing allowances offered in the ordinary course of business."; and

on page 70, line 12, after "later." insert "For purposes of this Section 20-120, a subcontractor is a person or entity who enters into a subcontract as the term "subcontract" is defined in Section 1-15.107."; and

on page 75, line 15, by replacing "or proposal." with "or proposal or is on file with the State Board of Elections."; and

on page 81, line 18, by replacing "request for proposals" with "solicitation"; and

on page 103, line 1 by replacing "shareholder." with "shareholder, except pursuant to a contract providing for reimbursement limited to the rates approved for state employee travel."; and

on page 120, by replacing lines 13 and 14 with the following:

"Section 99-99. Effective date. This Act takes effect July 1, 2010 and shall apply to all procurements initiated on or after that date."

With these changes, Senate Bill 51 will have my approval. I respectfully request your concurrence.

Sincerely,

Pat Quinn
Governor