



# Eminent Domain: State Responses to Kelo

(continued from p. 1)

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 DQG ZRXOG QRW V H O O 1 / 1 & O H G 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 WKH WDNLQJV LQ S D U F H O I B U R I F H V

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 D I 2 U R H G 4 vote. It said the city would be barred from taking land to E H Q H 2 W D 3 S D U W L F X O D I L L O I S C O N S T I T U T I O N A N D S T A T E W \ R U “under the mere pretext of a public purpose, when its actual purpose was WR E H V W R Z D S U L Y D W H I M E F O R C O M M E R C I A L P U R P O S E S . . . .” The Connecticut judges had found evidence of such an improper purpose.

The U.S. Supreme Court’s majority acknowledged that while the taking Z D V Q R W W R K H O S - D V S I F C O M P E N S A T I O N L A Y D O W N B Y Q tity, 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, D Q G K H O G W K D W W K H 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.

The Illinois Constitution and laws H I M E F O R C O M M E R C I A L P U R P O S E S . . . . give the government’s power to take Q R Q H 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 Con- V W L W X W L R Q Q R U D Q \

“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 F Z D Q W W V S R D V O N I B W L 6 R ; P H G Z K D W 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 G H 2 Q H V

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 WR XVH TXLFN WDNH KDV JONG D PROGHP 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 EHOH; W D 3 FROVLGHU DHOIS BILQ XPEHU RI WKH House Bill 4091 (E.Lyons-Stephens-Mitchell-Sacia-Munson et al.), introduced after the Kelo decision, would GH; QH 3 TXDOL; HG SXEOLF ) 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.

7KDW SUHOLPLQDU\ ; QGLQJ RI PRPSHOVDWERQ 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 WR GH; QH 3 SXEOLF XVH H; LO HPLOH; W GR DOG LWV PHDOLOJ KDV 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.

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 EHOH; W D 3 FROVLGHU DHOIS BILQ XPEHU RI WKH House Bill 4091 (E.Lyons-Stephens-Mitchell-Sacia-Munson et al.), introduced after the Kelo decision, would GH; QH 3 TXDOL; HG SXEOLF ) 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.

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 LW LV VLJ Qd; E; D; W WK Other states’ responses Legislators have introduced bills, resolutions, or proposed constitutional

available for development, but also to eliminate conditions considered harmful: the existence of slums, or at least FRQGLWLRQV PDNLQJ WKH C or impossible to develop (such as tax liens and varied conditions of build-LQJV RQ WKH ODQG PDNLQJ 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 ZRXOG KDYH EHHQ GLI; FXO H; LO HPLOH; W GR DOG LWV PHDOLOJ KDV 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

This bill, H. R. 4091 (E.Lyons-Stephens-Mitchell-Sacia-Munson et al.), introduced after the Kelo decision, would GH; QH 3 TXDOL; HG SXEOLF ) 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 WHU HPSOR\PHQW ZLWK & KLFDJR DQG 1RUWKEURRN 2UPV 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 KDV ZULWWHQ PDQXDOV DQG DUWLFOHV RQ\$QD&FLQMRUVF 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 WKH /LFHQVHG \$FWLYLWLHV & RPPLWWHH DQG 3HQVLRQV

## 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 outreach 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 Technol-RJ\ & RQVXPHU 3URWHFWLRQ 6WDWH \*RYHUQPHQW \$GPL Vehicles Committees.

## 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
Illinois	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 blighted areas. A Missouri executive order created a task force to study use of eminent domain for private blighted areas. A legislative task force will study use of eminent domain in Ohio. A new Texas law prohibits use of eminent domain for private blighted areas. A Missouri executive order created a task force to study use of eminent domain for private blighted areas. 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 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 the U.S. Department of Justice 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  
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 2002 to 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; (3) create interagency agreement with State Police to ensure requirements of Abused and Neglected Long Term Care Facility Residents are met; (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

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Picture by Debbie Sikes

in a way that can reasonably be interpreted as seriously threatening a person or procedures in the Act, can declare a dog to be dangerous, subject to appeal. In such 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

## 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 photographs, tattoos, or microchips for ment, 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.

tion against dangerous dogs without regard to breed. The laws of 17 of those

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

- |           |              |          |
|-----------|--------------|----------|
| Colorado  | New Jersey   | Virginia |
| Florida   | New York     |          |
| Illinois  | 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 not allow a breed to be declared potentially dangerous or vicious.

seriously injured a person or another dog. It says that owners of dangerous or vicious dogs are liable for at least \$100,000 against damage or injury caused by their dogs. But the Ohio 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.

Some municipalities ban pit bulls even without exempting those already owned. Examples are Wheeling, Illinois; Arkansas City, Kansas; Fair- Wheeling prohibits keeping vicious or dangerous animals inside its limits. Pit bull terriers are included in 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

Locality	Locality
Wheeling, Illinois	Fairfield, Ohio
Arkansas City, Kansas	Yakima, Washington

## Pit Bull Ordinances With Grandfather Clauses

Locality	Locality
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 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

EXOOV ’ \$OVR ZKHQ VKRZQ SKRWRJUDSKV RI GRJV WKHVH H[SHUWV LGH  
 ³SLW EXOOV’ ZLWKRXW VSHFLI\LQJ WKHLU EUPHG\ LODOO\ WKH ZLWQH

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 WKH 8. & 7KH FRXUW DGGHG WKDW DQLPDO FRQWURO RI¿FHUV FRXOG XV 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 WKH RUGLQDQFH PHQWLRQV 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 WR SUHYHQW DQLPDO FRQWURO arbitrarily enforcing it.

Local bans on pit bulls are also sometimes challenged where state law VSHFL¿FDOO\ SURKLELWV ³E ordinances. For example, 15 years after Denver enacted a pit bull ban in 1989, Colorado banned municipal or GLQDQFHV VSHFL¿F WR SDU Denver challenged that law, citing home-rule powers and also arguing WMLRQDO\ EUDHG -VSKHJFH VWLWXWLRQDOO\ MXVWL¿H 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 ban- QLQJ SLW EXOOV E\ QDPH Z FDOO\ XQM XVWL¿HG

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.

7 KHVH ODZV GR QRW UAHLEW DO FRPRQ 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 ODWH 'HFHPEHU KHU R issue 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 IRU LQFUHDVVH UAHFWLQJ WKH VHOOHU IV FRVW of goods, services, or transportation. (For lumber products only, the law VSHFL¿FDOO\ PHQWLRQV WKDW D VHOOHU FDQ increase prices as needed to replenish its supply at current market prices.) A VWDWH RI¿FLDO FDQ EULOQJ VXLWW LG FRXUW 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 RI HPHUJHQF\ XQGHV L W U 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 P X V W G H F L G H Z K H W K H U D S 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”

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 proposed a permanent 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 rule 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 rule expires 150 days after issuance. In December the Attorney General proposed a 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 the Quality Care Board and ensure that the 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

6XPPDU\FKDUW FODVV LCHV DS SOLFDWLRQV IRU ZDLY HUV DOG PRGL FD tions into 19 general categories and lists their status: Administration of Medication (1 withdrawn or returned); Bids-Real Estate (1 approved);

& HUWL & FDWH

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

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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, 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.

66 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. The 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 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.)

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### 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 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(g); 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 4.0% of the worldwide 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)

**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, Z L W K W K H ¿ U V W S K D V H e a r e e s u c v e h o w i n g L Q E H Q H ¿ W V L Q ) < P L O C  
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 ¿ U V W H O H F W U R Q L F L V V X H R I W K H , , - , 6  
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 P D Q D J H P H Q W R I ¿ F H  
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 ¿ H G D Q G S U R Y L G H G V H u n o l e x p e n d i t u r e  
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 H e a r e e s u c v e h o w i n g L Q E H Q H ¿ W V L Q ) < P L O C  
tions 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 ¿ Q D Q F L D O F R P S O L D Q u e r t e r l y D X G L W H G W K H \$ X G L W R E x e c u t i v e O r d e r 2 0 0 3 ) a n d G  
5 performance audits. No special audits were requested in 2004. The ¿ Y H S H U I R U P D Q F H D X G L W H G W K H \$ X G L W R E x e c u t i v e O r d e r 2 0 0 3 ) a n d G  
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 D X G L W H G W K H \$ X G L W R E x e c u t i v e O r d e r 2 0 0 3 ) a n d G  
(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 were \$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 care services for 1.2 million people were served in an average month. Over 200,000 participants enrolled in the SeniorCare prescription drug program. G U X J E H Q H ¿ W S U R J U D P 7 K  
% H Q H ¿ W V I R U : R U N H U V Z L W  
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 beds. D X G L W H G W K H \$ X G L W R E x e c u t i v e O r d e r 2 0 0 3 ) a n d G  
33.8 million medical claim receipts without prescriptions, compared to 12.2 million in FY 2002 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 2003-2**

Executive Order 2003-2 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

(continued on p. 12)

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

(continued from p. 11)

savings of \$2.1 million. Seven lot-  
WHU\ GLVWULFW VDOHV RI PHV ZHUH PRYHG  
to Department of Revenue. This will  
result in lease savings of \$991,310 be-  
ginning in FY 2005. (15 ILCS 15/11;  
Nov. 2004, 5 pp.)

### *Report on tax filing deadlines, 2004*

Department of Revenue compared

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WD[ ¿ OLQJ GHDGOLQH V WR THGHUD O  
Department found that all federal and  
VWDWH WD[ ¿ OLQJ GHDGOLQH V WR THGHUD O  
(H.Res. 760 (2004), March 2005,  
2 pp.)

### State Employees' Retirement System

#### Social Security Program biennial report, 2004

At 2004 yearend, 4,552 local govern-  
ments 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 7 KH

#### Annual report, 2004

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Tollway Authority in 2004 were \$188  
million. Total revenue (including  
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was \$408 million. Total expenditures  
for 2004 were \$408 million. Traf-  
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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, in-  
cluding the extension of I-355 South.

I-Pass sales hit a record of more than  
329,000 transponders sold in Decem-  
ber of 2004 alone. (605 ILCS 10/23;  
undated, rec'd May 2005, 13 pp.)

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## FIRST READING

A publication of the Legislative Research Unit

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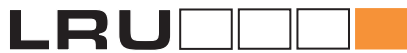
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