

Tressler LLP

Legislation to Watch

July 30, 2010



DISCLOSURE OF PUBLIC EMPLOYEE EVALUATIONS

Earlier this year, the Illinois Senate and House passed House Bill 5154 to amend the Personnel Record Review Act in order to prohibit the disclosure of performance evaluations under the Freedom of Information Act. It reads that

"This Act shall not be construed to diminish a right of access to records already otherwise provided by law, provided that disclosure of performance evaluations under the Freedom of Information Act shall be prohibited." (Source 83-1104).

However, under a July 26, 2010 amendatory veto, Governor Quinn changed the bill to exempt only law enforcement personnel. The Governor suggested that "If disclosed, these evaluations could be used by criminal suspects or defendants to undermine a police investigation or attack the credibility and integrity of a police officer."

Specifically the amendatory veto recommends that it be changed to read

"This Act shall not be construed to diminish a right of access to records already otherwise provided by law, provided that disclosure of performance evaluations of any State or local peace officer under the Freedom of Information Act shall be prohibited. For the purpose of this Section, 'peace officer' has the same meaning as in Section 2-13 of the Criminal Code of 1961."

This amendatory veto does not become law unless it is approved by a majority of the General Assembly in the November session. Alternatively, the amendatory veto could be overridden by a three-fifths vote of both houses. The bill will die if the legislature takes no action. It remains to

be seen what will happen with this proposed legislation.

The balance between the public's right to know and efficient governmental management is not a simple one. Obviously performance reviews can be very delicate and contain personal and private information that could be harmful to individuals if disclosed. The change may impact the use of performance evaluations as a management tool. It may create a chilling effect on a public body's ability to communicate honestly and openly with their employees about job performance, at least if the communication is in written form.

Interestingly, Governor Quinn signed a similar bill to exempt the performance evaluations of teachers and school administrators.

NEW DEADLINES FOR PLACING REFERENDA ON THE BALLOT

There have been several recent changes to the Election Code by Public Act 96-1008. Deadlines for the submission of public questions to referendum have been accelerated. Public Act 96-1008 also changes a number of other deadlines concerning nomination papers, filling vacancies, and objections. Some of the more relevant deadline changes include:

- Monday, August 2, 2010 (instead of Monday, August 16, 2010) is the last day to file petitions for referenda for questions of

public policy. The deadline for the filing of referendum petitions has been changed from 78 days before the election to 92 days before the election.

- Monday, August 9, 2010 (instead of Monday, August 23, 2010) is the last day to object to petitions for questions of public policy.
- Monday, August 16, 2010 (instead of Monday, August 30, 2010) is the last day

for the corporate authorities to adopt a resolution or ordinance to allow binding or advisory questions on the ballot. The deadline for governing bodies to legislatively place a referendum on the ballot has been changed from 65 days before the election to 79 days before the election.

Should you have any questions regarding the impact of the proposed performance review legislation or the new referendum deadlines, please feel free to contact us.

Best regards,

John M. O'Driscoll

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