

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SHARON BURGESS,)	
Petitioner,)	
v.)	PCB 2015-186
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb	Melanie Jarvis
Hearing Officer	Assistant Counsel
Illinois Pollution Control Board	Division of Legal Counsel
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Springfield, IL 62794-9274	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, PETITIONER'S POST-HEARING BRIEF, copies of which are herewith served upon the Hearing Officer and upon the attorney of record in this case.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the documents described above, were today served upon the Hearing Officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys and to said Hearing Officer with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mailbox in Springfield, Illinois on the 1st day of September, 2015.

SHARON BURGESS

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
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THIS FILING SUBMITTED ON RECYCLED PAPER

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OF THE STATE OF ILLINOIS

SHARON BURGESS,)	
Petitioner,)	
v.)	PCB 2015-186
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PETITIONER'S POST-HEARING BRIEF

NOW COMES Petitioner, SHARON BURGESS, by its undersigned attorney, for
Petitioner's Post-Hearing Brief, states as follows:

INTRODUCTION

Petitioner seeks approval of a corrective action budget which includes costs that exceed the maximum payment amounts set forth in Subpart H pursuant to the authority of 35 Ill. Adm. Code § 734.860 ("unusual or extraordinary circumstances"). In performing early action, costs were incurred that exceed the Subpart H rates due to the Prevailing Wage Act and the Agency's failure to propose rule changes to reflect prevailing wage requirements. The budget amounts are reasonable as they are based upon the actual costs incurred during early action.

STATEMENT OF FACTS

This appeal arises from releases reported from two diesel underground storage tanks at a former Kankakee service station, which were reported on August 14, 2013 and assigned Incident #2013-0906. (R.716; R.300) At all times relevant hereto, Kankakee County has had prevailing wage rates for truck drivers, laborers, and operators. (R.420 - R.425)

On August 19, 2013, the Office of the State Fire Marshal (hereinafter “OSFM”) approved a permit to remove the tanks. (R.712) Upon reaching a mutually agreeable time with the OSFM for the tank removals, the owner’s consultants, CW3M Company, Inc., removed the tanks on September 18, 2013. (R.714) The OSFM representative observed contamination present. (Id.) Pursuant to the requirements of early action, the tanks and contaminated soil were excavated, transported and disposed of. (R.300 - R.301; see also R.322 (Early Action Excavation map))

On January 3, 2014, the consultant submitted the application for reimbursement for early action activities. (R.510) With respect to work requiring the use of drivers, laborers, and operators, the early action costs incurred were far over the maximum allowable reimbursement rates allowed under Subpart H, and accordingly the consultant reduced the reimbursement requests in order to receive payment:

Early Action	Actual Costs	Deductions	Allowed by Subpart H
UST Removal	\$14,952.09	(\$7,448.63)	\$7,503.46
Excavation, Transportation & Disposal of Contaminated Soil	\$42,648.51	(\$11,974.45)	\$30,674.06
Backfilling the Excavation	\$19,279.77	(\$5,413.19)	\$13,866.58
Total	\$76,880.37	(\$24,836.27)	\$52,044.10

(R.659 - R.661)

Approximately one-third of the actual costs incurred in performing these three early action activities exceeded the maximum amounts allowed by Subpart H. On March 7, 2014, the Agency approved the application as submitted, subject to the \$5,000 deductible and a nominal handling charge. (R.497) Thereafter, site-investigation activities were undertaken. (R.302)

On February 20, 2015, Petitioner submitted the Corrective Action Plan & Budget to the Agency. (R.297) Having defined the soil and groundwater plumes on site, the Plan proposed

removing the remaining contaminated soil that exceeds applicable remediation objectives.

(R.302) Specifically, contaminated soil will be removed with a trackhoe, replaced with clean backfill and topped with six inches of course aggregate. (R.305) The estimated volume of the excavation is 455 cubic yards. (R.306; see also R.331 (“Proposed Corrective Action Excavation Map”)) The Plan calls for further analytical work to determine whether contamination has spread beyond the proposed excavation area. (R.303)

The nature of the work to be performed is comparable in scope and size to the excavation, transportation, disposal and backfill activities performed at the early action stage. (R.308) At the early action stage, actual costs were incurred at the following unit rates:

Early Action	Actual Costs	Quantity of Soil	Unit Rate
Excavation, Transportation & Disposal of Contaminated Soil	\$42,648.51	451.82 cu. yds.	\$94.39 per cu. yd.
Backfilling the Excavation	\$19,279.77	582.14 cu. yds.	\$33.12 per cu. yd.

(R.659)

Based upon these unit rates of actual costs incurred during early action, the budget proposes performing these same activities:

Corrective Action	Quantity of Soil	Unit Rate	Budget Amount
Excavation, Transportation & Disposal of Contaminated Soil	455.00 cu. yds	\$94.39 per cu. yd.	\$42,947.45
Backfilling the Excavation	455.00 cu. yds	\$33.12 per cu. yd.	\$15,069.60

(R.342)

The amount requested in the budget was expressly recognized as exceeding the maximum payment amounts set forth in Subpart H:

While the quantities for the attached CAP Budget are correct, the amounts Subpart H allows to complete the work are insufficient, based on actual costs incurred during early action activities. For reference, the attached Appendix H¹ contrasts recent occupational employment wages for various trades required for a LUST Project against the most recently updated prevailing wage rates for Kankakee County, within the district where the Fleet Fuel site is located. Because prevailing wage was incurred at the site, and will incur again for further activities, the excavation and backfilling rates have been updated in the budget to match those of the actual costs from early action. As provided in Appendix D, the current budget details an accurate listing of the quantities needed to perform the work, and rates developed from actual work conducted at the facility during early action without Project Labor Agreements (PLAs). The quantity of excavation and backfill during early action is similar to the proposed excavation. The actual early action costs were documented in a reimbursement claim received by the Agency on January 3, 2014.²

(R.308)

Attached to the submittal were documents demonstrating how prevailing wage rates differ from the mean or median wages commonly paid for the same activities. For example, the Bureau of Labor Statistics data reports wages that are half the prevailing wage rates in Kankakee:

¹ (R.409 - R.425)

² (R.569 - R.575)

Occupation	Mean Hourly Wage ³	Median Hourly Wage ⁴	Prevailing Wage ⁵
Operator	\$22.24	\$20.13	\$47.10
Truck Driver	\$19.40	\$18.37	\$33.41
Laborer	\$16.58	\$14.42	\$32.86

These figures are for demonstrative purposes based upon a simple comparison of base pay, and does not include non-wage benefits such as insurance, pension, vacation, training and overtime benefits required for the prevailing wage. (R.421) Also included with the budget submittal was an analysis of a typical 1000 yard excavation and backfill job, alternatively assuming averages wages and prevailing wages for Marion County. (R.413 - R.419)⁶ For such a typical job, the project would exceed Subpart H maximum reimbursement rates by 31.79% due to a 91.83% increase in the labor component. (R.415) Moreover, the reimbursement rates under Subpart H would be insufficient to pay average wages, let alone prevailing wages. (Id.)

The Budget submittal also complained that the Subpart H rates have not been updated to reflect prevailing wages (R.308), an issue that will be addressed in more detail in the legal argument herein.

On March 19, 2015, the Agency approved the Plan and modified the Budget to reimpose Subpart H maximum rates. (R.290) The reasons given for these modifications were as follows:

³ BLS Occupational Employment and Wages, May 2012 (R.410 - R.412)

⁴ Id.

⁵ Kankakee County Prevailing Wage for February 2015 (R.420 - R.425)

⁶ Marion County has lower prevailing wage rates than Kankakee County, so the analysis is not directly applicable, but the difference between reimbursements under Subpart H and prevailing wage rates would necessarily be greater.

1. **\$11,438.70 for Excavation, Transportation, and Disposal costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.**

2. **\$4,013.10 for Backfilling the Excavation costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.**

(R.292)

These tables summarizes the reductions made:

Excavation, Transportation, and Disposal of Contaminated Soil:

Number of Cubic Yards	Cost per Cubic Yard (\$)	Total Cost
455.00	\$94.39	\$42,947.45
455.00	(\$25.14)	(\$11,438.70)
455.00	69.25	\$31,508.75

Backfilling the Excavation:

Number of Cubic Yards	Cost per Cubic Yard (\$)	Total Cost
455.00	33.12	\$15,069.60
455.00	(8.82)	(\$4,013.10)
455.00	24.30	\$11,056.50

(R.292)

On April 22, 2015, Petitioner timely filed this appeal to the Illinois Pollution Control Board. (Pet. For Review)

LEGAL PROVISIONS CITED IN AGENCY LETTER

1. Illinois Environmental Protection Act.

In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable . . .

(415 ILCS 5/57.7(c)(3))

2. Illinois Pollution Control Board regulations.

Costs ineligible for payment from the Fund include, but are not limited to:

. . .

(zz) Costs that exceed the maximum payment amounts set forth in Subpart H of this Part;

(35 Ill. Adm. Code § 734.630(zz))

ARGUMENT

I. STANDARD OF REVIEW

Pursuant to Section 57.7(c) of the Act (415 ILCS 5/57.7(c)), an applicant may appeal an Agency decision to “disapprove or modify a plan or report” to the Board under the provisions of Section 40 of the Act (415 ILCS 5/40). Under Section 40 of the Act (415 ILCS 5/40), the Board’s standard of review is whether or not the application as submitted to the Agency would violate the Act and Board regulations. Illinois Ayers v. IEPA, PCB 03-214, at p. 8 (April 1, 2004). Therefore, the Board must decide whether or not the application as submitted to the Agency, demonstrates compliance with the Act and Board regulations. Id.

Furthermore, the Agency’s denial or modification letter frames the issue on appeal. Id. Pursuant to Section 57.7(c)(4) of the Act, this letter must contain:

(A) an explanation of the Sections of this Act which may be violated if the plans were approved;

(B) an explanation of the provisions of the regulations, promulgated under this Act, which may be violated if the plan were approved;

(C) an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and

(D) a statement of specific reasons why the Act and the regulations might not be met if the plan were approved.

(415 ILCS 5/57.7(c)(4))

The Agency has a duty to specify its reasons in the letter or be precluded from raising that issue. Illinois Environmental Protection Agency v. Illinois Pollution Control Board, 86 Ill.2d 390, 405 (1981). The reasons given by the Agency in its denial letter are that the rates are not

reasonable and exceed the maximum reimbursements amounts allowed under Subpart H. The modification letter did not specify any additional information that the Agency needed in order to review the submittal.

II. REGULATORY BACKGROUND OF SUBPART H RATES

Prior to the creation of “maximum payment amounts” located in Subpart H of Part 734 of the Board’s regulations, the Agency relied upon a “secret” rate sheet to evaluate reasonableness of costs, which the Board later found to be an improperly promulgated rule without binding effect. Illinois Ayers v. IEPA, PCB No. 03-214, at p. 16 (April 1, 2004). While the validity of the “secret” rate sheet was being litigated before the Board, the Agency initiated a rulemaking to create a legal framework for reviewing plans and budgets under the LUST Program. In re Proposed Amendments to: Regulation of Petroleum Underground Storage Tanks, R04-22(A) & R04-23(A) (consolidated) (hereinafter simply the R04-22 proceedings)

The Agency’s initial rulemaking proposal included maximum payment amounts, authority for the Agency to set higher maximum payment amounts on a site-specific basis for “unusual or extraordinary” circumstances, and a requirement that the Agency review payment amounts every two years to determine whether the maximum payment amounts reflect market rates. See Petition in R04-22, at pp. 29, 32 & 33 (Jan. 13, 2004)⁷ The maximum payment amounts were derived from the secret rate sheet, and the Board stated that it was “cognizant that the methods used to develop the rates by the Agency were not scientifically or statistically recognized methods.” First Notice in R04-22, at p. 1 (Dec. 1, 2005) Indeed, part of the ultimate

⁷ The review of rates was later amended to annual inflation factor and triennial review. (35 Ill. Adm. Code § 734.875)

holding in Illinois Ayers was that the rates proposed in the budget were reasonable, although they were above those set in the “secret” rate sheet. Illinois Ayers, PCB No. 03-214, at p. 17 (April 1, 2004) Nonetheless, the Board found that the rule proposed when taken as a whole, including provisions for extraordinary circumstances, would provide for reimbursement of reasonable remediation costs. First Notice in R04-22, at p. 1 (Dec. 1, 2005).

The maximum payment amounts were derived from a collection of previous reimbursement requests, the average of which became the maximum reimbursement rate, or in some cases the average plus one standard deviation. First Notice in R04-22, at p. 78 (Dec. 1, 2005). In other words, these are average private sector costs from over ten years ago, adjusted by an annual inflation rate. The only costs for public jobs presented in the rulemaking were from underground storage tank projects by the Illinois Department of Transportation, but these were rejected from consideration by the Board. Second Notice in R04-22, at p. 73.

Several attempts were made by participants in the R04-22 proceedings to clarify what are “unusual” or “extraordinary” circumstances, without which consultants feared that either the Agency would never recognize such circumstances exist or require continual litigation. First Notice in R04-22, at pp. 72-73 (Dec. 1, 2005) The Board declined, stating that it was” not convinced that the proposal would benefit from specification of “atypical” situations.” Id. at p. 73. Undersigned counsel suggests that the original framework of the Agency’s proposal was analogous to authority for a site-specific or adjusted standard, where “factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner.” (415 ILCS 5/28.1(c)) If so, it would be difficult to specify those circumstances not contemplated by the rulemaking, as by their nature they are unforeseen. Ultimately, the purpose of this provision is simply to allow “for

reimbursement to exceed the maximum payment amounts under unusual or extraordinary circumstances.” Final Notice in R04-22, at p. 16 (Feb. 16, 2006).

III. LABOR LAW AMENDMENTS OF 2013.

In 2013, Illinois passed the Economic Development Act of 2013, which contained many provisions related to the LUST Program, namely the legislature directed payment of prevailing wage rates, gave the Agency authority to require Project Labor Agreements, and increased the resources of the LUST Fund. (P.A. 98-0109, effective date July 25, 2013). This appeal deals directly with the prevailing wage rates required by the amendments to the Prevailing Wage Act. (820 ILCS 130/2 (adding Leaking Underground Storage tank work to definition of “public works”)⁸ However, prevailing wage requirements are now expressly referenced in the Illinois Environmental Protection Act. (415 ILCS 5/57.8(a)(6)(F)(certifying compliance as part of project labor agreements) They are also implicitly referenced by virtue of the increase in money available to the LUST Fund. (415 ILCS 5/57.11(f))

The purpose of the Prevailing Wage Act is to encourage the efficient and expeditious completion of public works by public bodies by ensuring that workers receive a decent wage. People ex rel. Dep't of Labor v. Sackville Constr. Inc., 402 Ill. App.3d 195 (3rd Dist. 2010). In June of each year, it is the obligation of the public body to “investigate and ascertain the prevailing rate of wages as defined in this Act” or request the Illinois Department of Labor to do so. (820 ILCS 130/9) In doing so, private sector wages can not to be considered in setting a

⁸ It should be noted that the State took the position that prevailing wages were required to be paid on LUST projects prior to the Economic Development Act of 2013. See CW3M v. Department of Labor, 2013 IL App (4th) 120246-U (2013) (determining it was premature to decide whether prevailing wages were owed for work performed on LUST projects initiated in 2003 and 2005).

prevailing wage. Illinois Landscape v. Department of Labor, 372 Ill.App.3d 912 (2nd Dist. 2007) (holding that Illinois Department of Labor could not consider U.S. Department of Labor determinations in ascertaining the prevailing wage because the federal government uses both public and private hours when determining federal wages)

As discussed in the previous section, the maximum payment amounts set in Subpart H were based entirely upon private sector contracts, and the costs incurred by the Illinois Department of Transportation when it contracts for underground storage tank remediation work was expressly ignored. The Prevailing Wage Act actually requires private sector work to be entirely excluded in calculating the prevailing wage. Hayen v. Ogle County, 101 Ill.2d 413, 416 (1984). As the Illinois Supreme Court further pointed out in Hayen, a public body has independent obligations under the Prevailing Wage Act, the failure of which to perform is sanctionable. Id. By modifying the budget to impose non-prevailing-wage based costs, as well as ignoring the Department of Labor data submitted with the budget, the Agency violated the Prevailing Wage Act.

Given this inherent conflict between Subpart H rates and prevailing rates, the legislative history is clear about what these amendments were intended to accomplish and how they would be addressed:

SENATOR MURPHY:

And, finally, Senator, under current law, the labor costs are set by the Pollution Control Board on these projects. But your bill will mandate that the prevailing wage will apply. How do you intend – or what is your intention on the resolution of that inherent conflict?

SENATOR HUCHINSON:

It is standing policy of the State that on public – on public work projects, we pay prevailing wage.

SENATOR MURPHY:

So will – does this preempt, then, the Pollution Control Board going forward from setting it? Is that your understanding?

SENATOR HUTCHINSON:

They would have to pay prevailing wage.

(Ex. B, at p. 114)

The Sponsor in the House expressed a similar conclusion:

[Representative] Rosenthal: Does that mean that the Pollution Control Board is going to be overridden or are they still going to be . . .

...

[Representative] Bradley: . . . the Pollution Control Board needs to update their numbers. And so, that's the route that's going to be looked at to try to do expeditiously.

(Ex. A, at p. 192)

Pursuant to the Illinois Environmental Protection Act, "[t]he Agency shall propose and the Board shall adopt amendments to the rules governing the administration of this Title to make the rules consistent with the provisions herein." (415 ILCS 5/57.14A) While the bulk of the prevailing wage requirements are in the Prevailing Wage Act, the Economic Development Act of 2013 incorporated these changes in the Environmental Protection Act. (415 ILCS 5/57.8(a)(6)(F)) Moreover, pursuant to Part 734.875 of the Board's regulations, the Agency is required to report to the Board as to the need to update Subpart H reimbursement rates:

No less than every three years the Agency must review the amounts set forth in this Subpart H and submit a report to the Board on whether the amounts are consistent with the prevailing market rates. The report must identify amounts that are not consistent with the prevailing market rates and suggest changes needed to make the amounts consistent with the prevailing market rates. The Board must publish notice of receipt of the report in the Environmental Register and on the Board's web page.

(35 Ill. Adm. Code § 734.875)

The Agency has declined to meet with the LUST Advisory Committee to discuss making Subpart H consistent with prevailing wage (R.308), as required by 35 Ill. Adm. Code § 734.150. In addition, the Agency has not reported to the Board on the sufficiency of Subpart H to meet prevailing market rates (R.308), as required by 35 Ill. Adm. Code § 734.875.

Under the applicable standard of review, the Petitioner need only show that the submittal does not violate the legal provisions cited by the Agency. Here it would be more accurate to state that the Agency's modification violate the law as it knowingly imposed maximum payments based upon private sector contracts. Nor is the Agency precluded from approving reimbursements in excess of Subpart H maximum payment amounts.

IV. UNUSUAL AND EXTRAORDINARY CIRCUMSTANCES

The Agency is authorized by Board regulations to approve maximum payment amounts above Subpart H on a site-specific basis:

If, as a result of unusual or extraordinary circumstances, an owner or operator incurs or will incur eligible costs that exceed the maximum payment amounts set forth in this Subpart H, the Agency may determine maximum payment amounts for the costs on a site-specific basis. Owners and operators seeking to have the Agency determine maximum payment amounts pursuant to this Section must demonstrate to the Agency that the costs for which they are seeking a determination are eligible for payment from the Fund, exceed the maximum payment amounts set forth in this Subpart H, are the result of unusual or extraordinary circumstances, are unavoidable, are reasonable, and are necessary in order to satisfy the requirements of this Part.

(35 Ill. Adm. Code § 734.860 (emphasis added))

As discussed previously, it is a common feature of regulatory programs to provide site-specific relief from rules of general applicability. Site-specific relief from zoning ordinances can

be obtained through a variance. Site-specific relief from environmental regulations can be obtained through an adjusted standard. Here, prevailing wage requirements vary by the “locality” where the physical work is to be performed, which generally means “county.” (820 ILCS 130/2) Therefore, site-specific adjustments are reasonable and appropriate.⁹

Of the factors listed in Section 734.860, only reasonableness was raised as an issue in the modification letter. Without conceding that any other issue than “reasonableness” is before the Board, Petitioner will quickly address all of the factors in Section 734.860 at least briefly.

A. INCURRENCE OF COSTS THAT EXCEED THE MAXIMUM PAYMENT AMOUNTS.

The site has already incurred costs that exceed the maximum payment amounts in Subpart H during early action and will incur costs that exceed those same rates to perform the approved corrective action plan. (R.308)

B. COSTS ARE OTHERWISE ELIGIBLE FOR REIMBURSEMENT FROM THE LUST FUND.

The excavation and reclamation activities at issue are traditional reimbursable costs, as evidenced by the budget form. (R.342) The approved corrective action plan contemplates excavating contaminated soil and replacing the excavation with clean backfill. (R.305) The modification letter does not refute these costs are for eligible activities.

⁹ As the determination is on a site-specific basis, not on a “plan-basis,” the reimbursements rates, if approved by the Board herein, would apply to any future excavation and backfilling work performed at the site.

C. UNUSUAL OR EXTRAORDINARY CIRCUMSTANCES

The maximum payment amounts established under Subpart H were created without reference to prevailing wages, or public sector rates. Also, the Subpart H rates contemplate statewide rates, whereas prevailing wages impose a localized wage floor for specified laborers on a county-by-county basis. In addition, the Agency has failed to perform its duties under the Prevailing Wage Act and the Illinois Environmental Protection Act to propose new rules to ensure that prevailing wages are paid from the LUST Fund.

D. COSTS ARE UNAVOIDABLE AND NECESSARY.

The Prevailing Wage requirements are unavoidable and necessary because they are legal mandates. “Civil and criminal sanctions are provided against public bodies or contractors who violate their obligations under the Act.” Hayen v. Ogle County, 101 Ill.2d 413, 416 (1984).

E. COSTS ARE REASONABLE.

As a categorical matter, costs imposed by the prevailing wage requirements are reasonable because they are legally required. On a more fine-grained analysis of the costs, the Board has previously ruled that actual costs incurred in the past are sufficient to prove that the costs are reasonable. Illinois Ayers v. IEPA, PCB 03-214, at pp. 6 & 17 (April 1, 2004). The rates requested here were based upon actual costs incurred during early action at this site. These costs were documented in the early action reimbursement package submitted to the Agency. If anything this approach is conservative as rising costs, including prevailing wages that are reviewed monthly, will likely mean that the work will still go over budget.

V. CONCLUSION

No law would be violated by approving the budget as submitted to the Agency, as approving payments over the maximum allowed by Subpart H are authorized in “unusual or extraordinary” circumstances such as these. Furthermore, the budget submittal evidenced a reasonable cost for budgeting purposed based upon actual costs incurred and documented at the early action stage. Finally, the Agency did not identify any additional information it needed to evaluate the submittal.

WHEREFORE, Petitioner respectfully requests that the Agency determination herein be reversed and the Agency be directed to restore the costs removed from the budget, award a reasonable attorney-fee, and for such other relief as the Board deems meet and just.

Respectfully submitted,

SHARON BURGESS,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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EXHIBIT A

House Debates on Economic Development Act of 2013
(Senate Bill 20)

(98th Ill. Gen. Assem., House Proceedings May 30, 2013)

Electronic Filing - Received, Clerk's Office : 09/01/2015

STATE OF ILLINOIS
98th GENERAL ASSEMBLY
HOUSE OF REPRESENTATIVES
TRANSCRIPTION DEBATE

67th Legislative Day

5/30/2013

Speaker Turner: "Gentleman moves for the adoption of Floor Amendment #4 to Senate Bill 20. All in favor say 'aye'; all opposed say 'nay'. Representative Harris."

Harris, D.: "Thank you, Mr. Speaker. I'd just like to know what is the technical Amendment? Just, you know, give us some idea."

Speaker Turner: "Representative Bradley."

Bradley: "It's a page and line Amendment. It fixes the date regarding the adoption of the Midwest Redevelopment TIF District Ordinance. The Amendment changes the date to May 27, 2000. It's a typo."

Harris, D.: "Thank you."

Speaker Turner: "Gentleman moves for the adoption of Floor Amendment #4 to Senate Bill 20. All in favor say 'aye'; all opposed say 'nay'. In the opinion of the Chair, the 'ayes' have it. And the Amendment is adopted. Mr. Clerk."

Clerk Bolin: "No further Amendments. No Motions are filed."

Speaker Turner: "Third Reading. Mr. Clerk, please read Senate Bill 20 for a third time."

Clerk Bolin: "Senate Bill 20, a Bill for an Act concerning government. Third Reading of this Senate Bill."

Speaker Turner: "Representative Bradley."

Bradley: "All the items in this Bill are related to economic development. This is the Economic Development Act of 2013. These are many good ideas that have come from different places and different parts of the state. There's... there's incentives and economic development, job creation for downstate. There's incentives, economic development for Chicago. There's incentives, economic development for

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northeastern Illinois. And there's statewide economic development and incentives for job creation in here. Ladies and Gentlemen of the House, I respect the concerns of my dear friend and colleague Representative Harris, the spokesperson of the Revenue Committee. And we get to the end of session these are not always ideal the way these things go. And I apologize to him for any discourtesies that he felt that the Revenue Committee or that he personally received as a result of this Bill. Having said that, there's a lot of good things in this Bill for economic development and for job creation. Downstate we have Representative Brown's idea with regard to the seed fertilizer plant in Tuscola, creating billions of dollars in investment and thousands of local jobs in our area, both in terms of construction and permanently. We also have TIF extension and language that is necessary to continue a TIF program in Grundy County. This is very important to Representative Roth and Representative Mautino. We have a tax exemption issue that's come up with the Department of Revenue for the Washington Area Community Center near the Peoria area, which is very important to that area. We have the income tax TIF for East St. Louis, one of the most impoverished and underdeveloped opportunities in the State of Illinois, which is very important to Representative Jackson and Senator Clayborne which is included in here. Statewide we have more resources going into the LUST Fund with EVA having the ability to use project labor agreements similar to what the... the Capital Development Board does where appropriate. And again, statewide we have the

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farmland assessment which is vital to downstate farmers that this assessment program continue so that we can continue to feed the rest of the world. For northeastern Illinois, there's the Rosemont Convention Center which doesn't cost the state any money but which allows them to have greater flexibility in the spending of moneys already received. We have the municipal McPier issue, which allows them to develop the construction of a DePaul arena, acquisition of land, changes for audits. Again, no specific cost to the state, allowing them greater flexibility for funds and for bonding authority that is already there which is their first and primary responsibility. We have a Brownfield Redevelopment for the City of Chicago. And we have a TIF District for the west side of the City of Chicago. Again, statewide we have the enterprise zone trailer Bill. Last year we worked together in a bipartisan manner to reform the ways in which we do enterprise zones. There's cleanup that was needed to be done with this and a trailer Bill that was needed for this. And as a result of a year's of being smarter and learning more about this, we now know that this needs to be done. And then finally, and something that's been around for a very long time and is an attempt at a compromise on this issue, is to give the Illinois Department of Transportation to enter into public-private partnerships similar to the successful Illiana project for the third airport in Peotone. And so, again, this is a statewide Bill. There's pieces of this that certain areas like; there's pieces of this that certain areas of the state don't like. But again, I think that

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overall this is hopefully a balanced Economic Development Act which will create jobs and economic opportunities throughout the state. I would ask for an 'aye' vote."

Speaker Turner: "Representative Brown."

Brown: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Brown: "To the Bill, Mr. Speaker. I rise in support of the fertilizer plant portion of this proposal. I've worked long and hard on this proposal with folks from across the aisle, with folks around the state to make this project a reality. And I just want to tell you how important it is to my locals. I hail from Decatur, Illinois, the Soy Capital of the world and to have a fertilizer plant 40 miles down the road that produces urea, a key component to growing soybeans or grasses, even lawns up in Chicago, is hugely important. Not only to my constituents but also to yours as well. I rise in support of this Bill because it helps agriculturally around the state where 30 percent of our jobs are tied to the agricultural sector either directly or indirectly. But most importantly I rise to this Bill because of the financial impact not only to my district where it creates 1500 construction jobs, good paying, labor-supported construction jobs and 300 permanent jobs in my district, but it also pumps 1.2 billion dollars into the Illinois economy. It pumps business for our transportation as it sits on a railway hub. It pumps money again for transportation as it sits at a vital impasse for I-57 as well as State Route 36. Ladies and Gentlemen, this Bill,

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while not perfect, will push economic development in the State of Illinois. I ask for a green vote. Thank you."

Speaker Turner: "Representative Mayfield."

Mayfield: "Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Mayfield: "I just have one question. Representative, I see that the Illinois Petroleum Council is an opponent. Can you just tell me why?"

Bradley: "I assume it's over the LUST Fund."

Mayfield: "Pardon?"

Bradley: "I... I have met with them and am trying to address some of their concerns, but I assume it's over the LUST Fund."

Mayfield: "They are still opposed and you're trying to address their concerns?"

Bradley: "Yeah, yeah, they're opposed. They're going to be opposed to it, but I think that their concerns are workable. But I wouldn't say that they'll ever reach the point of not being opposed to the change to the LUST Fund."

Mayfield: "Can you share what their concerns are?"

Bradley: "The PLA's."

Mayfield: "Pardon?"

Bradley: "PLAs, Project Labor Agreements."

Mayfield: "Oh."

Bradley: "It's a policy difference. Yeah."

Mayfield: "Okay. Thank you very much."

Speaker Turner: "Representative Bill Mitchell."

Mitchell, B.: "Thank... thank you, Speaker. To the Bill. First of all, I would like to thank the chairman of the Revenue

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Committee, I think you've done a very, very good job. Thank the... one of the Sponsors, Representative Adam Brown. He's worked very, very hard for his district on this... this issue. I think the... Representative Brown said, this is vitally important for central Illinois. Do we... do I like everything in this Bill? No. But this is a district, this is a county right next to my district that's going to provide up to 2 thousand jobs. I was reading a... a statistic this morning in one of the national newspapers, the percent... listen to this folks, the percentage of Americans with a job is at its lowest level in 34 years. The workforce is down because people don't have work. This is a very important to Representative Brown's district, to my district. It gives work, construction, as well as permanent jobs. I urge an 'aye' vote."

Speaker Turner: "Representative Harris."

Harris, D.: "Thank you, Mr. Speaker. And let me just address the Bill for a few moments. You know, Repre... the Gentleman who needs... on our side of the aisle who needs the fertilizer plant had a very responsible Bill, House Bill 2496, and he had that early in the session. And we amended that Bill to include the Chicago Port Authority, the forgiveness of the Chicago Port Authority loan as something which the chairman of the House Revenue Committee wanted to put on the Bill. And we put it on the Bill. And we could have passed that Bill a month and a half ago. A month and a half ago. But you know, no, we don't want to pass it too early because we want to load up a Christmas tree Bill with everything that is in Senate Bill 20. Load it up. We could

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have done it, we could have taken care of his issue, we could have taken care of the Chicago Port issue which, oh, by the way, the Chicago Port issue isn't even in this Bill. But we could have taken care of those issues a month and a half ago, but no, we saved the Bill for the very last end. Well, let's look at what's in this Bill, this 373-page Bill that we got about three and a half or four hours ago, just so that you know what you're voting on. And there's goodies in here for everybody, but you need to know what you're voting on. We talked about the fertilizer plant, the McPier Expansion Bill. You know, that's probably... there's probably a reasonable inclusion here because they're not really asking for dollars from us. They're simply asking for authority to use some dollars that they already have from their TIF's. But you know, we never held a committee hearing on the Bill other than subject matter only, just to briefly describe it. Similarly, with the Rosemont Convention Center. The Rosemont Convention Center came to us in a subject matter only hearing and said, we want to use the money from the convention that... that you give us from the Convention and Visitors Bureau to backup state bonds. Well, we're not doing that. Instead, we're allowing them to go for bonding backed by the state's portion of sales tax revenue generated at the new fashion outlets. Now, most of you have probably not been to Rosemont, but what they have done up there is outstanding, outstanding. It would have only been capped if they had gotten the Cubs, but they're getting premium retail outlets that it's estimated is going to generate as much as 300 million

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dollars in retail sales generating perhaps 20 to 25 million dollars' worth of sales tax for the State of Illinois. Hey, that's a great deal. But you know what, I've got Schaumburg in my area with Woodfield Shopping Center. Some of you have shopping centers in your area, what about Oakbrook or Old Orchard or those other great shopping centers that ring Chicago? Do those municipalities get special state treatment from the sales taxes that are generated from their sales taxes to back state... to back the bonds that they want to issue? They sure don't. The farmland assessment, we understand the farmland assessment is important. Again, simply a subject matter only hearing. Let's talk about the LUST, the Leaking Underground sales... the Leaking Underground Storage Tanks that was just referenced here earlier. Why are the Illinois Petroleum Marketer's against it? Because this is a big deal. You just don't go down to the union hall and hire a guy with a backhoe to take out an empty Leaking Underground Storage Tank. You've got to go in now with a project labor agreement, with the EPA and the EPA is not used to dealing... doing project labor agreements, you gotta go in with the EPA and do a project labor agreement to make this happen. That's not easily done, it's not quickly done. But it's still got to be done. The Brownfields Redevelopment Zone probably... may be a worthwhile project, but do we know what's really involved? It's setting up a separate governmental entity, a separate governmental board. What are the powers of that board? What's the Constitution of that board? Again, we really don't know. My point here is

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simply this, there's an awful lot in here that you don't know what you're voting about. And I want to come back for a second to Peotone. You know, when was the last time we talked about Peotone? And we're... we've suspended the Rule, a Rule which was written by the Majority Party, so that... so that quick-take, eminent domain authority, can be used in... in the Peotone area. What sorts of things are supposed to happen that this Legislature should oversee when we take quick-take? Let me just briefly read to you from the Rule that we suspended, the types of information that's supposed to be given to the chairman and the Minority Spokesman of the Executive Committee when we do quick-take. The legal description of the property, the street address of the property, the name of each State Senator and State Representative who represents the territory that is subject of the proposed taking, the dates or dates on which the state or the unit of local government contacted each State Senator and State Representative concerning the intention of the state or unit of local government to request approval of legislation by the General Assembly authorizing the state or the unit of local government to acquire the property by eminent domain using quick-take power. That's only 4 requirements, Ladies and Gentlemen and there's a list of at least 10 or 12 requirements. It shouldn't be done easily. It's the wrong thing to do at the end. The Gentleman deserves the... the fertilizer plant. The Lady deserves the assistance she needs in Grundy County. There's some other good thing in this Bill. But it shouldn't happen the way that it's happening, it shouldn't happen in the

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last few days... the last few hours of session. And there's a lot of things in here that I think you will probably, notwithstanding the good, a lot of things in here you're probably going to regret voting for later on. I do urge a 'no' vote."

Speaker Turner: "Representative Bellock."

Bellock: "Thank you very much, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Bellock: "I wanted to ask under #3, McPier Expansion, if there was any money in there for a Chicago casino?"

Bradley: "No, Ma'am."

Bellock: "I'm sorry. I didn't hear?"

Bradley: "No, Ma'am. I wouldn't be sponsoring it if it was."

Bellock: "Okay. Thank you very much."

Speaker Turner: "Representative Davidsmeyer."

Davidsmeyer: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Davidsmeyer: "I... I know there's a number of good things in this Bill, as we've discussed and there's a number of bad things in this Bill, it's kind a lump of I don't know what. You... you said this is... economic development is the common subject in here. I... I don't understand how adding prevailing wage and PLA's to the LUST Fund applies to economic development?"

Bradley: "Well, if you read carefully in the LUST Fund portion, we're going to make sure that the LUST Fund is sufficiently supported and funded. And it's not solely going to be a result of the fee and tax structure,

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previously. If necessary, there'll be a diversion of state sales tax to make sure that there's proper money in there. Which I think was in response to maybe a question you may have had or some others may have had in making sure that there's sufficient funds in the LUST Fund to actually do these projects."

Davidsmeyer: "So... so, where... where are those other funds coming from?"

Bradley: "The... the diversion of state sales tax with regards to motor fuels."

Davidsmeyer: "Okay. So, it'll be... it'll take revenues away from the General Revenue Fund?"

Bradley: "Yeah. It won't take revenue out of sales tax unless... if it doesn't need it. But if it's needed, it's a backstop."

Davidsmeyer: "It... have... have we had sufficient funds in... in past years to cover all these LUST Fund projects?"

Bradley: "The last couple of years we've been okay. There have been situations in the past where it wasn't. There's concern by the Petroleum Marketers as to the cost of PLA associated with having to hire an attorney to do the PLA for them. And when the process of... of... we've had discussions and I hope that that issue can be worked through beyond the general policy concerns over extending PLA's to the LUST Fund."

Davidsmeyer: "Okay. On... on the previous Bill that this was included with there was something about poultry. Is there anything about poultry in this Bill?"

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Bradley: "No. I've had enough of that with the LUST Fund. I think that's coming back to us, so we can debate that maybe later today or tomorrow."

Davidsmeyer: "Okay. As I said... to the Bill. As I said, I think there's a number of good things in this Bill. I think it's incredibly unnecessary to lump it with these horrible other ideas. I... I appreciate your efforts on this, but I... I encourage a 'no' vote."

Speaker Turner: "Representative Riley."

Riley: "Thank you, Mr. Speaker. To the Bill. I... I would hope that certainly a lot of the measures in this Bill that benefit my area aren't deemed to be horrible. They're tremendous parts of a big economic development package and they're all important. I remember when I came down here in 2007 there was a Gentleman, good friend on the other side of the aisle, that was lobbying me for some development that was... that was going on in their district. And I told that person that I would always be... it would be a very rare time that I'd ever be against anyone's economic development efforts anywhere in this state. I spoke before a few months ago when we were talking about some of the facility closings that were going on all over the state and how I railed against them. It was important to me as I went all over this state talking to residents to be sure that economic development took place all over the state and especially in central and southern Illinois to the greatest extent possible. I support all of these measures cause I believe that economic development anywhere benefits us all, all over the state, certainly with regard to the Peotone

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Airport. And I've worked on airport issues as a planner for 30 years. This is going to do a lot just, you know, for economic development in that area, but it's going to do a lot for safety of the skies above the south suburbs... well, really above the entire flight path in Chicago, Illinois. This is a good Bill. You know, we never have a Bill that... that's perfect. But this is an extremely good Bill that touches a lot of people. And I would hope that you would join me in voting 'aye'. Thank you."

Speaker Turner: "Representative Mautino."

Mautino: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House. I rise in support of the Gentleman's legislation. There are two items which are very important to a lot of us downstate and I'd like to just quickly highlight the farmland assessment side. As the way that we properly assess farmland gets farther and farther apart, some of you in this room, whether you knew it or not, were facing 2000 percent increases in the assessment structure and there was just a great disparity between upstate and downstate. So, as that grew further apart, there was a risk of that failing, so it's a very important piece for all of us downstate. This gives us a little bit of breathing room; we can work out the solution for it. So, we have the next three years to get through that without having an adverse impact on your farmland properties in both the north... northern part of Illinois as well as the southern. Another part, that in my region, we've been very fortunate in Grundy County, it has been a great economic engine, there has been great growth. And because of a decision made about

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40 years ago on the amity tax structure, they have become at a... they've come to a competitive disadvantage for the areas around them, not only locally but on a state level. This language will allow them to continue their economic development district and be competitive. They have a number of very large-, small- and medium-size projects that are interested and this will greatly help them. So I commend the Sponsor and support the legislation. I ask for an 'aye' vote."

Speaker Turner: "Representative Rosenthal."

Rosenthal: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Rosenthal: "First of all, I'd like to rise in support of the Bill... overall Bill. And especially the Tuscola fertilizer plant, which we will be producing value out of products that are utilized in our resources. And I think that that's one of the things that we definitely need in Illinois. The other thing I'd like to address is the LUST Fund. And you know, for those that don't know it's for the underground leaking storage tanks. And these projects currently are between private contractors; it's an agreement between the owner of the tanks and the Office of the State Fire Marshal's approved contractor. And the remediation work may or may not be reimbursed from the LUST Fund and that... the distribution of the fund qualification for that remediation is evaluated by the Illinois EPA at the end of the remediation. The other thing is that the moneys for the reimbursement program are paid for by the tank owner distributors and there are no tax dollars in that fund. The

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wage rates for the LUST projects are set by... currently set by the Pollution Control Board not by the prevailing wage scale schedule from the Illinois Department of Labor. So, with this PLA what are the... what are the rates going to be? Are they going to be determined by the PLA? Are they going to be determined by prevailing wage or are they going to be determined by the Pollution Control Board?"

Bradley: "Well, again, we had a meeting earlier with Petroleum Marketers and we'll try to... try to get a quick determination in terms of making sure that those prevailing wage rates are updated so that there's proper reimbursement on this fund."

Rosenthal: "Does that mean that the Pollution Control Board is going to be overridden or are they still going to be..."

Bradley: "I... I think the way that it's going to be... try to be worked and I don't want to make a complete commitment because I don't believe that I have the expertise on this that you do, Representative Rosenthal..."

Rosenthal: "Okay."

Bradley: "But the Pollution Control Board needs to update their numbers. And so, that's the route that's going to be looked at to try to do expeditiously."

Rosenthal: "Okay. The... the other question, do you know who's going to bear the cost of the PLA and whether that cost is going to be reimbursable?"

Bradley: "Again, that's an issue that's come up and an issue that I believe would be reimbursable. There's a question about attorneys' fees and that's something, again, that we hopefully can work through in an expeditious manner."

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Rosenthal: "Well, currently, right now..."

Bradley: "I think that can be..."

Rosenthal: "Well..."

Bradley: "I think that can be handled by Rules and by a process that doesn't require legislation or we're going to try to... to work through that."

Rosenthal: "Okay. Well, currently, when there's a release of petroleum products right now, there's a rapid response in controlling the damage and that's very important. So what's going to happen in emergencies? Are you going to have to wait for PLA to be in place or can they respond to it without that?"

Bradley: "Well, my understanding is that the Environmental Protection Agency will use the same process that the Capital Development Board uses for project labor agreements that it oversees."

Rosenthal: "Okay. Thank you very much. And I... I encourage an 'aye' vote on this Bill. Thanks."

Speaker Turner: "Representative Walsh."

Walsh: "Thank you, Mr. Speaker. To the Bill. I've been here for about one year and a lot of my colleagues have told me to watch what goes on, learn what's happening here and listen. For the last year, I've been listening to jobs. We need jobs. We need economic development. We put a Bill here today that is going to address those concerns. We're going to create jobs in Illinois. The south suburban airport alone, construction jobs 11,400. After its construction in its first year, 4500 jobs. After 15 years, 14,000 jobs. This is to go along with the Illiana Expressway that's

EXHIBIT B

Senate Debates on Economic Development Act of 2013
(Senate Bill 20)

(98th Ill. Gen. Assem., Senate Proceedings May 31, 2013)

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lead a good quality life. Either we can do it in partnership with them or we can give them a chance to do it. Vote Yes on the bill.

PRESIDING OFFICER: (SENATOR MUÑOZ)

The question is, shall House Bill 215 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 36 voting Aye -- 38 voting Aye, 20 voting Nay, 1 voting Present. House Bill 215, having received the required constitutional majority, is declared passed. Senator Rose, for what purpose do you seek recognition?

SENATOR ROSE:

Thank you, Mr. President. I -- I would ask that the record reflect my intent to have voted No on House Bill 214. I did push the button and would just ask for that reflection on the record. Thank you.

PRESIDING OFFICER: (SENATOR MUÑOZ)

The record will reflect a No vote on House Bill 214. We'll make sure we check on your button to see if you're having any more difficulties. On the Supplemental Calendar 1, we have Senate Bill 20. Senator Hutchinson indicates she wishes to proceed. Mr. Secretary, read the motion.

SECRETARY ANDERSON:

I move to concur with the House in the adoption of their Amendments 1, 2 and 4 to Senate Bill 20.

Signed by Senator Hutchinson.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator, on your motion.

SENATOR HUTCHINSON:

Thank you, Mr. President and Ladies and Gentlemen of the

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Senate. Senate Bill 20, as amended by the House, is a major economic development package that will deliver needed projects throughout the State. It creates the Public-Private Partnership Agreement {sic} (Agreements) for the South Suburban Airport Act, modeled after the Public-Private Partnership Agreement {sic} for the Illiana Expressway Act enacted in 2010. It paves the way for the construction of a new ten-thousand-seat arena and event center across from the McCormick Place footprint. The arena would be used for college basketball games, Chicago Public School and Catholic conference sporting events, trade show events and conventions, and concerts. Provides property tax abatements for large fertilizer plants, if approved by the taxing districts. Revitalizes and redevelops south suburban brownfields, by providing income tax incentives attributable to new employees of businesses located within the South Suburban Brownfields Redevelopment Zone. Creates an income tax TIF in the East St. Louis River Edge Zone area, similar to some previous intermodal zones. The program will make grants to eligible developers for infrastructure improvements within the zone. Changes the current method of assessing farmland by assessing it at the median value of farmland statewide, rather than each individual parcel's value. For the tax year 2015, the value of the annual change will be reduced by five dollars per acre in order to lighten the impact on low-productive farmland. Provides changes to the Enterprise Zone Act to ensure clearer standards for zone eligibility and for accounting of tax benefits for those entities that benefit from an enterprise zone. Allows the EPA to require project labor agreements on cleanup projects funded by the LUST Fund. Also, allows the LUST Fund to receive additional sales tax revenue to

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ensure the solvency of the fund. I would ask for your support and I'm happy to answer any questions.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Jacobs, for what purpose do you seek recognition?

SENATOR JACOBS:

Mr. President, I move the previous question.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Jacobs has moved the previous question. Per our Rules, only the following Senators will be recognized to speak: McCarter, Hastings, McConnaughay, Murphy, Althoff, McCarter. Senator Althoff, for what purpose do you seek recognition?

SENATOR ALTHOFF:

Thank you very much, Mr. President. To the bill.

PRESIDING OFFICER: (SENATOR MUÑOZ)

To the bill, Senator.

SENATOR ALTHOFF:

You know, it's -- it's -- obviously, it's the last day of Session again, and here we go putting in lots of really wonderful movement-forward economic development, really positive projects in -- in a bill that is also tinged with some really bad decisions that this Chamber is going to be asked to make. I notice we've done really good things with McPier. We've done some good things, potentially, with an airport. All of those are economic development. We address numerous concerns - trailer bill that we had with the enterprise zones that we worked so hard on last year. And yet we also have conditions in this bill that will be very detrimental to our, once again, small businesses that are now dealing with all of our LUST Funds. We're putting in a provision that requires all of those projects to enter into PLAs. It's

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inappropriate. And I just, again, would like to draw this Body's attention to the fact that each one of these projects is so large, so big it deserves its own bill and its own consideration and its own debate. We've got the timer on, which gives each of us five minutes to talk about this, and look at everything that's included in this bill. And some of 'em are extraordinary, laudable projects. But some of them deserve our closer attention. And I would ask, as we move forward, and even in this piece of legislation, that we start doing the work of the people and we give each one of these projects the attention and the debate that they deserve. We continually make big decisions every single day of Session and then come back and go, "Oops! Sorry. Didn't see that. Didn't know that was in the bill." Ladies and Gentlemen, this is a really bad precedent and it's a bad way of doing business and I would ask, as we move forward, as a Body together, that we stop this practice and that we give each one of these projects, again, the attention that they deserve. For our constituents and our districts, and, again, for all the people that we serve and that work here in the State of Illinois, look at this bill extraordinarily closely and make the decisions that you need to make. But, again, as we move forward, this is not a good precedent. Thank you very much.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Hastings, for what purpose do you seek recognition?

SENATOR HASTINGS:

To the bill, Mr. President.

PRESIDING OFFICER: (SENATOR MUÑOZ)

To the bill, Senator.

SENATOR HASTINGS:

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Thank you, Mr. President. I rise in support of Senate Bill 20, more specifically to the South Suburban Airport component. It's our jobs as legislators to create policy and to foster an economic environment to create jobs. And when you travel around the Chicago Southland area and you see the economic blight due to the economic downturn, you see businesses that are closing and families that are out of work and struggling to make ends meet. That is why this legislation comes at the right time. This bill will bring good-paying jobs that will undoubtedly bring a better quality of life that our people expect and are -- deserve. The Chicago Southland is a uniquely positioned geographic region for an airport. Not only is it one of the largest and fastest-growing regions in the State of Illinois, but we have the convergence of major highways, the proximity to rail hubs and the land available necessary to construct such an airport. The South Suburban Airport in this bill will initially create close to eleven thousand jobs for our skilled laborers, in addition to providing the much-needed direct and ancillary economic development to businesses that surround our community. And I know that there are a lot of other components to this bill, but speaking to the component of the South -- South Suburban Airport, I want to take this opportunity to thank my fellow sponsors of this bill, and on behalf of the constituents of the 19th Senate District. And most importantly, I urge an Aye vote.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Murphy, for what purpose do you seek recognition?

SENATOR MURPHY:

Question of the sponsor, Mr. President.

PRESIDING OFFICER: (SENATOR MUÑOZ)

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Sponsor indicates he {sic} will yield.

SENATOR MURPHY:

Senator -- who am I talking to? Hold the clock..

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Hutchinson.

SENATOR MURPHY:

Hold the clock on that. Senator, thank you. You know, I second the comments from Senator Althoff. There are a lot of good things in here, but this is a pretty blatant logroll. I've got a couple of questions on the LUST Fund. You know, the -- the -- the emergency circumstance issue - we discussed this a little bit in committee - you've got a leaking tank going into a storm drain at two in the morning. With the PLA requirement, you're potentially going to slow this process down. You got to go call the EPA; you have to go get a -- a -- a contract with the PLA. Some of these jobs are smaller and -- and -- and -- and, frankly, getting a lawyer and doing the PLA will cost more than the job. The EPA had indicated an -- a desire and a willingness to limit the application of this and I just want to confirm that you share that intent legislatively, that this will be limited in its scope and that -- in that we will not be -- we will not be impeding emergency circumstances where there are environmental risks trying to track down the EPA and get a PLA agreement, or in smaller cases, that a contractor can be hired without having to go to a PLA that makes it more expensive. Is that your intent, Senator?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Hutchinson.

SENATOR HUTCHINSON:

Thank you, Senator Murphy. It absolutely is the intent and

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I know...

PRESIDING OFFICER: (SENATOR MUÑOZ)

Could you just keep the noise down a little bit.

SENATOR HUTCHINSON:

And I do know that the Director -- the EPA does not want to make emergency situations worse. The whole point of a PLA is to go to cost-efficiency, quality, safety and timeliness. In a situation like you just mentioned, the first person that you would call is IEMA, and in those situations, there are ways to get around a PLA agreement. So, I -- yes, I do share that legislative intent.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Murphy.

SENATOR MURPHY:

Now, Senator, who will pay the costs of the PLAs? Are the PLA costs reimbursable from the LUST Fund proceeds? And also, are the legal costs to get the PLA in place also reimbursable from the LUST Fund?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Hutchinson.

SENATOR HUTCHINSON:

Yes, it is reimbursable.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Murphy.

SENATOR MURPHY:

Can you show me where in the bill it says that expressly?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Hutchinson.

SENATOR HUTCHINSON:

It doesn't state that expressly. It is part of what you

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certify to in order to be reimbursed.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Murphy.

SENATOR MURPHY:

And, finally, Senator, under current law, the labor costs are set by the Pollution Control Board on these projects. But your bill will mandate that the prevailing wage will apply. How do you intend -- or what is your intention on the resolution of that inherent conflict?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Hutchinson.

SENATOR HUTCHINSON:

It is standing policy of the State that on public -- on public works projects, we pay prevailing wage.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Murphy.

SENATOR MURPHY:

So will -- does this preempt, then, the Pollution Control Board going forward from setting it? Is that your understanding?

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Hutchinson.

SENATOR HUTCHINSON:

They would have to pay prevailing wage.

PRESIDING OFFICER: (SENATOR MUÑOZ)

Senator Murphy.

SENATOR MURPHY:

To the bill. You know, again...

PRESIDING OFFICER: (SENATOR MUÑOZ)

...bill, Senator.