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George H. Ryan  
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To the Honorable Members of  
The Illinois Senate  
92nd General Assembly

Pursuant to Article IV, Section 9(b) of the Illinois Constitution of 1970, I hereby veto Senate Bill 1522, entitled "AN ACT concerning State Government."

Senate Bill 1522 creates the Small Business Advisory Act (SBA Act) and requires each State agency to establish a small business advisory page on the World Wide Web. Senate Bill 1522 also requires that each agency include plain language versions of all regulatory or legislative "interpretations and advisory opinions" issued by the agency. Further, Senate Bill 1522 establishes that "any person who acts, or fails to act, in reasonable reliance on the advisory opinions and interpretations may not be held liable in any civil, criminal, or regulatory action" because of that reliance.

As a former small business owner, I agree with the intent of this legislation and I have been a strong supporter of many similar efforts currently being carried out by my administrative agencies via their current web pages, published pamphlets, and electronic reports. However, I am concerned that Senate Bill 1522 contains several unanticipated and insurmountable problems.

Senate Bill 1522 would place many state regulatory agencies in conflict with their federal counterparts. Most federal statutes (upon which many Illinois programs are based) require a strict liability standard as applied to enforcement matters. Section 15 of the SBA Act would create a subjective standard of "reasonable" reliance to determine whether enforcement was appropriate. For delegated federal programs, a less stringent State standard could cause the federal delegation to be withdrawn or seriously challenged. In cases where there is a state program that is federally required, the approval of the entire state program could be withdrawn. In some instances, this might subject the State of Illinois to federally imposed sanctions, including the loss of highway funds.

I am also concerned that Senate Bill 1522 may infringe upon the traditional role of the Office of the Illinois Attorney General, which is responsible for providing advice regarding applicability of legislative enactments by issuing advisory opinions on behalf of the Executive Branch. I am also concerned that the courts of this State are likely to find that Senate Bill 1522 impermissibly infringes upon the court's powers authority of these courts since it appears to delegate to the Executive agencies the authority to determine legislative intent. In effect, Senate Bill 1522 would effectively tie the hands of every court and states attorney in the State by granting a liability waiver from any civil, criminal, or regulatory action in which a defendant claims to have acted under any "reasonable" reliance on the plain language interpretation of any advisory opinion.

Furthermore, if Senate Bill 1522 were to become law, most State agencies would encounter difficulties in determining what is meant by the terms "advisory opinion" and "interpretation," as used in Section 15 of the SBA Act. Since those terms are not defined within the SBA Act, it is unclear just what documents would be included within those classifications. Likewise, it is unclear just what "reasonable reliance" is intended to mean, and there is no case law that would be persuasive since, for example, a "reasonable" standard is not employed in environmental enforcement litigation.

Senate Bill 1522 would likely create greater ambiguity and uncertainty for small businesses that find themselves regulated on one issue by more than one administrative agency charged with administering the law. The resulting required explanations by each agency may contradict one another, especially since there could be differences of interpretation

between the two agencies. Based upon the interpreted intent of Senate Bill 1522, it is this administration's belief that the means of resolving differences of interpretation of legislative intent is through resolution before the appropriate court, and if necessary, ultimate review by this State's Appellate and Supreme Court, and not through explanations of conflicting state agency web pages.

The mandates imposed by Senate Bill 1522 upon State agencies arguably contradict the requirements of the Administrative Procedure Act (APA), in that the plain language explanations described in Section 10 (b) of the SBA Act may constitute a "rule" as defined in Section 1-70 of the APA. Posting those statements on an agency's web page would violate the APA's procedural requirements.

For these reasons, I hereby veto and return Senate Bill 1522.

Sincerely,  
George H. Ryan  
GOVERNOR