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Will the Construction Safety Act Cost Illinois Consumers, Employers and Job Seekers?

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Under the provision of the act, construction worker injured on the job would receive restitution through workers' compensation and could sue the businesses – including architects and drafters – involved in the construction project for millions in damages.

According to the Alliance to Help Employment and Development (AHEAD), the passage of the Construction Safety Act would only bring back the problems inherent in SWA. The alliance is composed of more than 30 different organizations opposed to the new legislation.

“Reinstatement of SWA is neither a safety issue nor a worker’s right to compensation after injury issue,” said Evan Williams, vice president of External Relations for the Mechanical Contractors Association of Chicago, a member of AHEAD. “The SWA will only serve to increase costs on owners, consumers and contractors on all types of construction throughout Illinois.”

What’s in the Amendment?

The amendment to H.B. 2094, introduced by Rep. John Fritchey (D-11), is titled the Construction Safety Act of 2008. Proponents point to several requirements in the legislation that they claim will make construction worksites safer for workers and that will offer help to workers who are injured on the job, such as:

- ◇ Grants Department of Labor officials the authority to immediately and fully inspect any construction site thought to be dangerous.
- ◇ Requires architects and draftsmen to follow certain standards when designing a project and to be held accountable for flaws in their designs that lead to injuries to workers or the public.
- ◇ Requires that scaffolds, cranes

and ladders be safely erected and secured.

- ◇ Requires posted safety information and warnings.
- ◇ Allows injured workers and their families to sue anyone with responsibility for keeping the work site safe, including owners, subcontractors and architects.
- ◇ Offers incentives to keep work-sites safe.

AHEAD’s Issues with HB 2094

According to AHEAD, problems inherent in the Construction Safety Act fall into four categories:

It threatens jobs: According to AHEAD, reinstating SWA will increase construction costs, including insurance rates and stifle private investment and public works projects, costing the state tax revenue, jobs and economic growth.

Adds additional costs to consumers: According to a study prepared by the Watson-Wyatt Group in 1998, it was conservatively estimated that SWA cost Illinois employers approximately \$170 million a year in insurance costs and the legal fees alone related to defending third-party suits.

The right of workers to sue already exists: Injured workers under current law have adequate remedies to pursue through Illinois’ Workers’ Compensation system, a no-fault remedy for workplace injuries, and through common law where workers may sue contractors for negligence.

It will not improve worker safety: The passage of the Occupational Safety and Health Act by Congress in 1970 ushered in a new era of occupational safety, with detailed standards and effective methods of enforcement. According to the Illinois Workers’ Compensation Commission, Illinois’ overall worker injury rate decreased 53 percent

between 1991 and 2003. The state maintains the tenth lowest injury rate in the country.

A Historical Perspective on the Structural Work Act

Enacted in 1907, SWA provided legal protection to employees injured in falls from scaffolding. The 1911 enactment of the Illinois Workers’ Compensation Law established a comprehensive employee compensation system for workplace injuries. Workers’ compensation was considered to have superseded SWA, and the act was dormant until the 1950s, when an Illinois court decision struck down a provision prohibiting third-party lawsuits.

From that point until the repeal of SWA in 1995, an Illinois worker could collect benefits under workers’ compensation and file suit under SWA – regardless of fault – against each party involved in the project, including owners, suppliers, contractors, subcontractors and designers.

In that same time period, the courts expanded the legal meaning of scaffold to cover almost anything on a construction site, including scaffolds, trenches, ladders, the floors of a building and even the building itself. “The expansion of the meaning of ‘scaffold’ expanded the number of cases that could be covered by the Structural Work Act,” Williams said.

The 1995 repeal of SWA made Illinois like 48 other states that rely on workers’ compensation laws to provide a single, no-fault means of recovery for workplace injuries. The 1995 repeal kept in place the ability of injured workers – even while recovering under Workers’ Compensation – to sue defendants for damages, based on fault. SWA is interpreted as a “should have known” standard, which nearly is impossible for many contractors to overcome.