

REQUESTED "NO" VOTE

REINSTATING STRUCTURAL WORK ACT WILL COST ILLINOIS JOBS

Summary:

An amendment to HB 2094 was filed on April 8 to create the so-called "Construction Safety Act," which essentially reinstates the Structural Work Act ("SWA") repealed in 1995.

Background:

Enacted in 1907, SWA provided compensation to employees injured in falls from scaffolding. The 1911 enactment of the Illinois Workers' Compensation Law established a more comprehensive employee compensation system for workplace injuries.

Workers' Compensation was considered to have superseded SWA, and SWA was dormant until the 1950s when an Illinois court decision struck down a provision that prohibited third-party lawsuits. From that point until its repeal in 1995, a worker could collect benefits under Workers' Compensation and then file suit under SWA against each party involved in the project *regardless of fault*, including owners, suppliers, contractors, subcontractors and designers. In addition, the courts broadly interpreted SWA to apply beyond scaffold-related injuries.

The 1995 repeal of SWA eliminated this dual system of strict liability, and 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 pursue tort actions in court against any defendant based on fault.*

Please vote NO on reinstating SWA, under the rubric of the Construction Safety Act, for the following reasons:

Threatens Illinois Jobs.

Reinstating SWA will increase construction costs and stifle both private investment and public works projects. It will also put Illinois at a disadvantage to neighboring states, where the cost of doing business within the construction industry is significantly lower, costing the State tax revenue, jobs and economic growth. Other than New York, no state has a SWA-like law; Illinois is one of 49 states that relies on Workers' Compensation laws to address workplace injuries.

No Increase In Worker Safety.

The passage of the Occupational Safety and Health Act ("OSHA") by Congress in 1970 has ushered in a new era of job-site safety. Under OSHA, contractors can not only be fined, but can also go to prison, for having unsafe working conditions. Additionally, since the repeal of SWA in 1995, the number of construction jobs in Illinois rose from 215,100 in 1994 to 275,300 in 2006, while construction site fall fatalities declined from 20 deaths in 1994 to 14 in 2006.

Costs 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. It can often cost an uninvolved party tens of thousands of dollars in legal fees just to be removed from the case. These costs are passed on to *all* consumers.

Workers' Right to Sue Exists.

Under current law, workers still have the right to go to court, but now must prove negligence against the defendant for the accident.