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FISCAL IMPACT STATEMENT

LS 6516

BILL NUMBER: SB 114

NOTE PREPARED: Jan 12, 2010

BILL AMENDED: Jan 11, 2010

SUBJECT: Government Ethics.

FIRST AUTHOR: Sen. Miller

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Statements of Economic Interests:* This bill provides that legislative statements of economic interests are not required to report gifts or purchases by a lobbyist from the filer's business. It requires legislative branch lobbyists to report such expenses to the Lobby Registration Commission, the applicable member of the General Assembly, and the Clerk of the House or the Secretary of the Senate. It requires the Lobby Registration Commission to compile these purchases and gifts and provide them to the legislator or candidate. The bill also requires the Clerk of the House and the Secretary of the Senate to make legislative branch statements of economic interests available on the Internet.

Lobbyist Gifts: The bill provides that a lobbyist may not make an expenditure with respect to an applicable individual unless the lobbyist receives the approval of the applicable individual before making the expenditure and informs the particular applicable individual the cost of an expenditure that the lobbyist wants to make for the particular applicable individual at the time the lobbyist seeks consent to the expenditure. It reduces the amount of a single expenditure that must be reported by a lobbyist from \$100 to \$50. It also reduces the calendar year threshold of expenses that must be reported from \$500 to \$250.

Lobbying: The bill provides that the definition of "lobbying" the General Assembly includes communication with a state executive branch officer to influence legislative action. It provides that the definition of a legislative branch "lobbyist" does not include a national organization established for the education and support of legislators, legislative staff, or related government employees. It removes the inclusion of officials and employees of state educational institutions from the definitions of "public official" and "public employee" for purposes of the lobbyist registration statute. The bill also provides that a member of the General Assembly may not be registered as a lobbyist for 365 days after ceasing to be a member of the General Assembly.

Lobbyist Reporting Requirements: This bill classifies expenditures as those that can be "clearly and reasonably" attributed to a particular applicable individual and general expenditures that cannot be attributed to a particular applicable individual. It requires that a lobbyist's expenditure report must include expenses for a function or activity to which all members of the General Assembly are invited, all members of a standing or other committee established by the rules of the House of Representatives or Senate are invited, or all members of a study committee are invited. It provides that such expenses may not be allocated and reported with respect to a particular applicable individual. It provides that if more than one lobbyist contributes to an expenditure, each lobbyist is required to report the actual amount the lobbyist contributed to the expenditure. It provides that a lobbyist must report actual expenditures with respect to an applicable individual and may not allocate to the particular applicable individual a prorated amount derived from an expense made with respect to several applicable individuals. It also provides that a lobbyist may not report an expenditure relating to property or services received by an applicable individual if the applicable individual paid for the property or services what would be charged to any purchaser of the property or services in the ordinary course of business. The bill changes the time during which a lobbyist must report certain expenditures with a legislator from seven days to 15 days. It increases the daily penalty for failure to file lobbyist registration statements and activity reports from \$10 per day to \$100 per day. It increases the maximum penalty for failure to file lobbyist registration statements and activity reports from \$100 to \$9,000. It also requires the Lobby Registration Commission to make available on the Internet all reports, statements, and documents filed with the commission and all manuals, indices, summaries, and other documents the commission is required to compile, publish, or maintain.

State Officeholder's Name in Media Advertisements: The bill provides that a state officer (the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, or Superintendent of Public Instruction) may not use the state officer's name or likeness in an audio or video publication paid for entirely or in part with appropriations made by the General Assembly. It provides that this prohibition does not apply to a communication made by the Governor concerning the public health or safety or by a state officer that has a compelling public policy justification that is approved by the Budget Committee and the Budget Agency. It provides that a state officer may use the title of the office the state officer holds in such a communication. It also provides for criminal and civil penalties for violations.

Campaign Finance Reports: The bill requires the Election Division to develop, and the Election Commission to approve, electronic filing standards for campaign finance reports. It eliminates a requirement that a candidate for legislative office and the candidate's committee file with the county election board of the county in which the candidate resides a duplicate copy of each required report filed with the Election Division. It establishes a local office large expenditure candidate's committee designation for certain local office candidate committees that receive more than \$25,000 in contributions or make more than \$25,000 in expenditures during a reporting period. It requires a local office large expenditure candidate's committee to file reports, notices, and other instruments electronically with the Election Division (instead of with a county election board). It reduces from \$50,000 to \$25,000 the contribution threshold for a political action committee to file campaign finance reports electronically. It requires a political action committee to file reports electronically with the Election Division if the committee makes more than \$25,000 in expenditures in a reporting period. The bill makes conforming changes to recognize other forms of electronic filing in addition to electronic mail. It also requires the election division to provide an electronic receipt for electronic filings.

The bill makes technical changes and it repeals superseded statutes.

Effective Date: July 1, 2010; January 1, 2011.

Explanation of State Expenditures: (Revised) *Statements of Economic Interests:* This bill requires the Clerk of the House and Secretary of the Senate to publish legislator statements of economic interest on the General Assembly website. This requirement is expected to be accomplished through existing resources.

In addition, the bill requires that legislative branch lobbyists report gifts and applicable purchases to the Indiana Lobby Registration Commission (ILRC). This requirement is meant to replace the current requirement that legislative branch statements of economic interests report gifts and purchases by a lobbyist from the filer's business. The ILRC is required to compile these reports on purchases and gifts and provide them to the appropriate legislator or candidate, which may increase administrative expenditures for the ILRC.

(Revised) *Lobbyist Gifts:* The ILRC will incur additional expenses as a result of the decrease in the daily minimum reportable expenditure amount from \$100 to \$50, and the decrease in the calendar year reportable expenditure amount from \$500 to \$250.

The ILRC is responsible for creating the forms for reporting gifts to legislators. The ILRC is also required to prepare, publish, index, and make these reports available for public inspection. By decreasing the reporting amounts as provided in this bill, the ILRC will have to spend more resources compiling these reports, and will also have to amend the forms for reporting gifts.

Lobbying: The cost to public universities could total approximately \$7,800 if all public university trustees and presidents were required to register as lobbyists. There are approximately 78 public university presidents and trustees. The expenditure impacts could be greater if additional university employees other than presidents and trustees registered. The current fee for registration is \$100. The fee is \$50 for those that lobby for a nonprofit organization as part of their salaried responsibilities to their employer.

(Revised) *Lobbyist Reporting Requirements:* The bill requires the ILRC to make available on the Internet all reports, statements, and documents filed with the commission and all manuals, indices, summaries, and other documents the Commission is required to compile, publish, or maintain. These requirements may increase administrative expenditures for the ILRC.

Campaign Finance Reports: The bill establishes a local office large expenditure candidate's committee designation, and requires these committees to file reports, notices, and other instruments electronically with the Election Division. The Election Division will have to create forms for those required to file under this new designation and provide the forms on the campaign finance website. The bill requires the Election Division to develop, and the Election Commission to approve, electronic filing standards for campaign finance reports. In addition, the bill requires the Election Division to provide an electronic receipt for an electronic submission with the date and time the submission was filed. These requirements may increase expenditures for the Election Division.

(Revised) The bill's requirements represent an additional workload on the ILRC and the Election Division, and existing staffing and resource levels, if currently being used to capacity, may be insufficient for full implementation. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative action.

Explanation of State Revenues: *Lobbying:* General Fund revenues could increase by approximately \$7,800 if all university presidents and trustees had to register with the ILRC. The ILRC reports there are approximately 1,700 lobbyists currently registered.

(Revised) *Lobbyist Reporting Requirements:* The bill changes the late fee penalty from \$10 per day to \$100 per day for each day after the deadline until the lobbyist registration statement or the activity report is filed. The late penalties for late registrations and activity reports shall not exceed \$9,000. There are usually 50 to 100 late filers each deadline, with two activity report deadlines and one registration deadline. The ILRC reports that gift reports are routinely late as well. Increasing the late fee will probably result in increased compliance with the deadlines.

State Officeholder's Name in Media Advertisements: There are no data available to indicate how many officeholders may be found guilty of a Class A misdemeanor for knowingly or intentionally using the officer's name in an audio or video publication paid for with an appropriation made by the General Assembly, or how many may have a penalty imposed by the State Ethics Commission for a violation concerning ethics and conflicts of interest.

Additional Information - State Ethics Commission: The State Ethics Commission, finding a violation concerning ethics and conflicts of interest, may impose one or more penalties from among 11 in statute, including a civil penalty that does not exceed three times the value of any benefit received.

Misdemeanor: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Misdemeanor:* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Misdemeanor:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: ILRC; Public universities; Election Division.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: ILRC, 232-9860; Commission on Higher Education, 464-4400.

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