

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6281**

**BILL NUMBER: SB 70**

**NOTE PREPARED: Dec 1, 2010**

**BILL AMENDED:**

**SUBJECT:** Public Access Issues.

**FIRST AUTHOR:** Sen. Landske

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** *Public Access and Open Door Laws:* This bill provides that the court may impose a civil penalty against: (1) an officer or employee of a public agency; (2) the public agency; or (3) both the agency and the officer or employee, for violating the Public Records Law or the Open Door Law. It provides that the civil penalty may be: (1) not more than \$100 for the first violation; and (2) not more than \$500 for any additional violations.

The bill provides that a public agency may withhold personal information from public disclosure regarding an individual less than 19 years of age who participates in an activity conducted or supervised by a state educational institution, including personal information regarding the individual's parent or guardian.

*Request for Notices:* The bill provides that if a local government agency has the capacity to send electronic mail, the agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail; or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site).

*Review of Public Records In Camera:* The bill requires (rather than allows) a court to review public records in camera to determine whether redaction of the records violates the Public Records Act. If a formal complaint is filed, it requires the Public Access Counselor to review public records in camera without redaction (excluding redacted information that is a work product of an attorney) to determine whether the redaction of the records violated the access to Public Records Act.

*Education Fund for Public Access Counselor Program:* The bill creates an education fund for a program administered by the Public Access Counselor to train public officials and educate the public on the rights of

the public and the responsibilities of public agencies under the public access laws.

**Effective Date:** July 1, 2011.

**Explanation of State Expenditures:** *Public Records and Open Door Laws:* This bill could increase the expenditures of any public agency if any officer or management-level employee of that agency intentionally:

- (1) Fails to give proper notice of a regular meeting, special meeting, or executive session.
- (2) Takes final action outside a regular meeting or special meeting.
- (3) Participates in a secret ballot during a meeting.
- (4) Discusses in an executive session subjects not eligible for an executive session.
- (5) Fails to prepare a memorandum of a meeting required by IC 5-14-1.5-4.
- (6) Participates in at least one gathering of a series of gatherings under IC 5-14-1.5-3.1.
- (7) Denies or interferes with a person's request for inspection or copying of a public record if the record is subject to disclosure by law.
- (8) Charges a copying fee that exceeds the amount permitted.

The bill allows a court to assess a civil penalty of not more than \$100 for the first violation, and not more than \$500 for each additional violation of the provisions above. The individual, the public agency employing the individual, or the individual and agency are subject to penalties. Public agencies subject to penalties would pay the penalty from the agency's budget. The penalties are required to be deposited in the Education Fund established under the bill. The amount of penalties that will be collected is indeterminable because it will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

*Review of Public Records In Camera:* This provision could increase costs for public agencies that are required to provide an in camera inspection index to the Public Access Counselor. The index is required to include the reasons and explanations of why the documents, or any part of the documents, are alleged to be exempt from disclosure. Any increase in costs will depend upon the extent to which formal complaints are filed regarding possible violations of the Public Records Act resulting from redacted public agency records.

**Background Information** - Under IC 5-14-1.5-2 "public agency" means the following:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
  - (A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or
  - (B) audit by the State Board of Accounts.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.
- (5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.
- (6) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the commission.

Under this bill, the public agencies included above would be subject to the provisions regarding the Public Records and Open Door Laws. However, only public agencies that are not included in the definition of state agencies in IC 4-13-1-1 would be subject to the provisions regarding requests for notices.

**Explanation of State Revenues:** *Education Fund for Public Access Counselor Program:* Revenues from a public agency violating the provisions of this bill will be distributed into the Education Fund. The amount of revenue is indeterminable and will depend upon the number of violations and the amount of the penalty imposed as determined by the courts.

The nonreverting Education Fund established under the bill is required to be administered by the Treasurer of State and used to pay: (1) expenses of administering the fund; and (2) the administrative costs of training public officials and educating the public on the rights of the public and the responsibilities of public agencies under the public access laws.

**Explanation of Local Expenditures:** *Public Records and Open Door Laws:* Local units and agencies are included in the definition of public agency. [Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.]

*Request for Notices:* The bill provides that if a local government agency shall provide notice to anyone (other than news media) that makes an annual request for notice by: (1) transmitting the notice by electronic mail (if the agency has the capacity to send electronic mail); or (2) posting the notice on the agency's Internet web site (if the agency has an Internet web site). Any increase in expenditures should be minimal.

*Review of Public Records In Camera:* Local units and agencies are included in the definition of public agency. [Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.]

**Explanation of Local Revenues:**

**State Agencies Affected:** All.

**Local Agencies Affected:** All.

**Information Sources:**

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