

# LEGISLATIVE UPDATE

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County Recordors Conference  
April 2015

## SB 500 – Interest on Bank Accounts

- Amends IC 5-13-9-8 Effective July 1, 2015
- A service charge may be paid as a direct charge to the deposit or in manner that subtracts from interest earned
- If subtracted from interest earned then only the net is receipted and booked

## HB 1371 – Common Law Lien

- Amends IC 32-28-13 Effective July 1, 2015
- Common law liens of property owned by a public employee or public official (currently holds office or has at any time during preceding 4 years)
- IC 32-28-13-5 provides that a lien holder record a statement and that the statement be sent by the recorder to the property owner
- New- the statement must now include that if the property owner is a public official or public employee who has filed a written notice in accordance with IC 32-28-13-6.5 the common law lien is void 30 days after filing the written notice if suit has not been commenced

## HB 1371 – Common Law Lien (Con't)

- IC 32-28-13-6.5 added
- If a public employee or official receives a statement of intention then they may provide written notice to the recorder swearing and affirming that they the property owner are a public official or employee.
- Not later than 3 business days after receiving the recorder must send to the lienholder
  - A copy of the property owner's written notice
  - A statement that if the lienholder does not commence suit within 30 days the lien is void
  - The notice must be by certified mail with return receipt
  - The recorder shall record the date the statement is mailed to the lienholder
- The recorder will send a cop of the notice to the property owner

## HB 1371 – Address Restrictions (Con't)

- Amends IC 36-1-8.5 Effective July 1, 2015
- Adds covered official to be a public official (person who holds or formerly held office during preceding 4 years)
- Now the unit shall instead of may establish a process to prevent general public gaining access to the home address of a covered person through public property data base web site
- Unit must
  - Determine the forms of written request
  - Specify any information or verification required
  - Determine which person or department will receive and process request
  - Provide a method which a covered person is notified of procedure to be used
- Unit may charge a reasonable

## HB 1508 – Bond for Subdivision Plat

- Amends IC 36-7-4-709 Effective July 1, 2015
- Informational
- Provides that a local unit may not require a bond before a land developer records an approved secondary plat unless:
  - The development is within the existing public right-of-way
  - Related to erosion control

## HB1001 SBOA Examinations

- Amends IC 5-11-4-3 Increases rate charged for an audit to a unit to \$175
- Creates a trust and agency fund at the state for fees to be deposited into
- Fund to be used by State Examiner for examinations

## HB 1104– SBOA Examinations

- Adds IC 5-11-1-24.4 Effective July 1, 2015
- Audited entity that has:
  - An internal control officer; and
  - An internal control department;
- Established by the legislative body may request in writing to SBOA that:
  - They opt out of examination by SBOA and
  - Engage a CPA
- The request must be adopted through resolution by the legislative body

## HB 1104 – SBOA Examinations (Con't)

- SBOA within 60 days after receiving the request will approve or disapprove the request
- Approval based on:
  - Request filed more than 180 days before beginning of fiscal year
  - The selection process of the CPA follows the statutory requirements:
    - Must be licensed in Indiana and qualified to conduct examinations in accordance with SBOA guidelines which include:
      - Issuing findings that are in noncompliance with SBOA uniform compliance guidelines which will become part of a public report
  - The CPA will be paid for by the audited entity
- SBOA may still conduct a compliance review

## HB 1104– SBOA Examinations (Con't)

- Amends IC 5-11-1-25 Effective July 1, 2015
- Annual audits of units by SBOA not required
- Risk based examination that are
  - Established by SBOA and approved by the audit committee
- Risk factors include:
  - There is a newly elected or appointed fiscal officer
  - The annual report was either not timely filed or materially incorrect
- May not occur less than once every 4 years

## HB 1104 – SBOA Examinations (Con't)

- Exceptions to where an annual audit is required:
  - Federal requirements when there is federal financial assistance
  - Due to continuing disclosure requirements or
  - As a condition of a public bond issuance
- Must provide notice to SBOA that the entity is required to have an annual audit due to these conditions not later than 60 days after the close of the fiscal year
- Amends IC 5-11-1-18
- All examinations by SBOA may be made without notice before it was required to be without notice

## HB 1104 – SBOA Examinations (Con't)

- Adds IC 5-11-1-30
- A county may request that an examination by SBOA be conducted in accordance with GAAP. This request must be approved by a legislative body
- SBOA will approve or disapprove within 60 days
- Will approve unless:
  - Not requested within 60 days of fiscal yearend
  - The county does not account according to GAAP
  - The county did not maintain its records on GAAP basis
  - The financial statements and notes not presented to SBOA on an agreed upon schedule

## HB 1104– SBOA Examinations (Con't)

- Amends IC 5-11-5-1 defines exit conference
- As part of the review of the examination report SBOA will hold a gathering of officer examined, any employees or agents who are requested and legislative and fiscal bodies. This is referred to as an exit conference
- All information discussed and materials presented or delivered by any person during an exit conference are confidential expect to those officers, employees, attorney, etc. of the county who were not present. The confidentiality applies to them as well
- A person may not electronically record an exit conference
- An exit conference is not a meeting as defined under IC 5-14-1.5
- As a result of additional actions taken due to exit conference an additional exit conference may be called

## HB 1104– SBOA Examinations (Con't)

- Not more than 30 days after the initial exit conference is held, the legislative body may adopt a resolution approved by at least 2/3 vote requesting that an additional exit conference be held
- SBOA will conduct an additional exit conference not more than 60 days after SBOA receives request
- The county must pay the travel and staff costs of SBOA for an additional exit requested under such a resolution

## HB 1104 – SBOA Examinations (Con't)

- The information and materials that are part of an exit conference and the results of an examination including a preliminary report are confidential until:
  - The final report is made public
  - The state examiner has authorized publicity
  - The AG has instituted action on the basis of a preliminary report
- If a person knowingly or intentionally discloses information it is a class A infraction

## HB 1104– SBOA Examinations (Con't)

- Unless with a judicial order or specified in statute, the state board of accounts, its employees, former employees, counsel, agents, or any other person may not divulge the examination workpapers and investigation records except to internal employees, the audit committee, law enforcement, AG, prosecuting attorney, or authorized representative of the US.

## HB1104– SBOA Examinations (Con't)

- If an examination report shows or discloses the commission of a crime by any person, the state examiner's duty is to present the report to the prosecuting attorney of the county in which the crime was committed.
- Before it was to the grand jury

## HB 1104– Fraud Hotline(Con't)

- Adds IC 36-1-8-8.5 and amends IC 5-14-3-4
- Provides that the executive or fiscal officer of a unit may establish a fraud hotline number maintained by the unit where the public may report suspected fraudulent activity concerning officers and employees of the unit
- The identity and information from the hotline is considered confidential except that it may be disclosed to law enforcement, attorney general, inspector general, prosecuting attorney or SBOA.

## SB 393 - Surety Bonds

- Amends IC 5-4-1-5.1 Effective July 1, 2015
- Official bond filed with the fiscal officer of the political subdivision in addition to the county recorder
- For recorder still will file with county clerk but also with county auditor
- Fiscal officer will file with SBOA through gateway at time that the unit's annual report is filed
- Gateway will have available whether each individual who is to have filed has filed an official bond for faithful performance

## SB 393 - Surety Bonds (Con't)

- Amends IC 5-4-1-18
- Individuals shall file and maintain in place an individual surety bond during each year that the individual serves.
- Each bond must have a term of 1 year commencing on the first day
  - Of the calendar year
  - Fiscal year of the unit or
  - Individual's service in the office or position for which a bond is required
- Consecutive yearly bonds filed by an individual must provide separate coverage for each year.
- The aggregate liability of the insurer for a policy year is the sum of the amounts specified in the bonds issued for the year

## SB 393 - Surety Bonds (Con't)

- Individual surety bonds are now also required of:
  - Employees or contractors of the county whose official duties include
  - Receiving, processing, depositing, disbursing, or otherwise having access to funds
- Fiscal body may by ordinance authorize a blanket bond that
  - Is endorsed to include faithful performance and
  - Includes aggregate coverage sufficient to provide coverage amounts specified for those who are required to file a bond under this chapter

## SB 393 - Surety Bonds (Con't)

- The fiscal body may by ordinance authorize a crime insurance policy that provides coverage for criminal acts or omissions committed by officers, employees, contractors, commission members, and persons acting on behalf of the county
- The state is considered to be an additional named insured for purposes of recovering public funds on behalf of the county

## SB 394 – Reporting of Government Malfeasance

- Amends IC 5-11-1-9.5 Effective July 1, 2015
- An individual may report suspected malfeasance, misfeasance, or nonfeasance by a public officer to SBOA.
- Individual's identity is confidential unless court order
- Individual may not be retaliated against by public office or officer
- Not to be confused with:
- IC 5-11-1-27 (c) All erroneous or irregular variances, losses, shortages, or thefts of local government funds or property shall be reported immediately to the state board of accounts

## SB 489 – SBOA Access to Vendors

- Adds IC 5-11-1-29 Effective July1, 2015
- If requested a vendor shall allow SBOA to access:
  - All software, including information and data that is stored in the software
  - And records of computer services that a vendor has supplied to the political subdivision
- Access is:
  - Limited to read only capability
  - Provided to SBOA without prior notice or approval of the political subdivision
  - Provided as remote access if requested

## HB 1264 Internal Controls

- Amends IC 5-11-1-27 Effective July1, 2015
- SBOA will define and the audit committee approve the acceptable minimum level of internal control procedures and standards for internal control systems of political subdivisions
- Will include:
  - Control environment
  - Risk assessment
  - Control activities
  - Information and communication
  - monitoring

## HB 1264 Internal Controls (Con't)

- After June 30, 2016 the legislative body will ensure that
- The internal control standards and procedures are adopted
- Personnel receive training concerning the adopted standards and procedures
- The fiscal officer shall certify to SBOA at the time of annual report that these requirements have been met
- If found in audit that the adoption and training have not occurred
  - SBOA will issue comment
  - In subsequent audit if either still not done and not corrected within 60 days of notification then information forwarded to DLGF

## HB 1264 Internal Controls (Con't)

- All erroneous or irregular material variances, losses, shortages, or thefts must be reported immediately to SBOA
- A public officer who has actual knowledge of or reasonable cause to believe that there has been a misappropriation of public funds or assets
- Shall immediately send written notice to:
  - SBOA
  - County prosecutor