



# **Indiana Advisory Commission on Intergovernmental Relations**

June 5, 2012

Rhonda Cook, IACT Director of  
Government Affairs & Legislative Counsel





# **“Right to Work” and Everything Else**

814 bills filed / 175 Passed



# **IACT's Legislative Planning Process**



# Legislative Planning

- Cornerstone Issues: Municipal Authority to Adopt LOIT & Blanket Authority to Adopt Food-Beverage Tax
- Operational Issues:
  - Outreach to members for ideas
  - Sent to an IACT Policy Committee:
    - Administration, Community & Economic Development, Environmental, Municipal Finance, Public Safety, Transportation, Utilities
  - Ideas are voted on by Legislative Committee
  - Research and drafting
  - Author for introduction
  - Education/lobbying begins





# Offense v. Defense



# Conflict of Interest/Nepotism

## HEA 1005

- Conflict of Interest – *IACT Initiative*
  - Prohibits employees from holding elected office within the same city or town where they work.
  - Current employees who are also elected officials can serve out their term and run for office, but if elected again, they must resign employment.
- Anti-Nepotism (2 Parts – Employment/Contracting)
  - Relatives cannot serve in direct-line supervision. Relatives are: spouse, parent or stepparent, child or stepchild, brother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, son-in-law, daughter-in-law. Includes adoptions and half-blood brother/sister.
  - Contracts cannot be made with relatives without following disclosure steps.
- Budget implications
  - Budget will not be approved by DLGF unless the executive submits a statement stating the unit has implemented a nepotism policy.





# **Nepotism: HEA 1005**

***We are preparing local officials to meet the new requirements and additional workload***



# FOCUS: Nepotism

- Bill goes into effect July 1, 2012.
- Must *implement* a nepotism policy at the local level regarding hiring and contracting that is at least as stringent as the state mandate.
  - Adopt a resolution or ordinance putting the policy in place by July 1 and then implement it.





# FOCUS: Nepotism

Hiring provision:

- Current employees are grandfathered unless there is a break in employment.
  - *TIP:* We recommend that you develop a complete list of all individuals' employment status as of July 1, 2012 and ensure it is preserved as a permanent local record.





# FOCUS: Nepotism

## Employment Provision:

- *After July 1*, a relative cannot be hired in direct line supervision.
  - *TIP:* We recommend you have organizational charts detailing the chain of command. Consider a strategy which requires all new hires to view the organizational chart and verify that they are not related to anyone in direct line supervision. Another approach would be to require supervisors to verify that job applicants would not be in violation.
  - **Direct line supervision** means an elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decision about work assignment, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.





# FOCUS: Nepotism

## Employment Provision:

- Promotion
  - Grandfathered individuals may be promoted.
  - Employees hired after July 1, 2012 who in later years have relatives elected that are in the direct line supervision will have no promotion possibilities unless the promotion is within the merit ranks for police and fire departments.
  - *TIP:* Consider having employees hired after July 1, 2012 who are being considered for promotion to verify in writing that a relative has not been elected in their direct line supervision.





# FOCUS: Nepotism

## Contracting Provision:

- A unit cannot contract or renew a contract for goods or services with a relative or a business entity that is wholly or partially owned by a relative of the executive (mayor) or legislative branch (council member) without disclosure.
- *TIP:* Consider including disclosure of a relative as part of the bid/quote process.





# FOCUS: Nepotism

## Contracting Provision:

- Required disclosure:
  - The unit's official must submit full written disclosure to the State Board of Accounts within 15 days after final action on contract or purchase.
  - NOTE: There is a separate requirement to disclose under the criminal conflict of interest statute (IC 35-44-1-3.1) for contracts or purchases by the unit where the public servant has a pecuniary interest or derives a profit. Disclosure must be completed, acted upon at a public meeting and filed with the Clerk of the Circuit Court and the State Board of Accounts. Both the nepotism and criminal conflict of interest laws must be complied with in addition to complying with all provisions under the purchasing or public works laws.



# FOCUS: Nepotism

## Certification of compliance

- Each elected officer of the unit must annually certify in writing, **subject to the penalties for perjury**, that the officer has not violated the nepotism law and submit the certification to the executive (Mayor or Town Council President) of the unit no later than December 31 of each year.
- City and town council members and mayors must annually certify that they have not violated the contracting law.
- NOTE: This is why the verifications from employees and contractors are so important!





# FOCUS: Nepotism

## Penalties

- If the State Board of Accounts finds that a unit has not implemented appropriate policies, the non-compliance must be certified to the DLGF, which in turn cannot approve the entity's budget or any additional appropriations.
- If your budget is not approved, your budget and levy remain at the prior year's level (no levy growth) plus you have to appropriate your anticipated expenditures in the budget year through an additional appropriation (which will not be approved until there is a nepotism policy in place).





# **Statewide Smoking Ban**

***Educating members on the signage requirements***



# Statewide Smoking Ban

## HEA 1149

- Smoking prohibited in public places or within 8 feet of the public entrance.
- Allows smoking in certain: (1) gaming facilities; (2) cigar and hookah bars; (3) fraternal, social, and veterans clubs; (4) tobacco stores; (5) bars and taverns; (6) cigar manufacturer facilities; and (7) cigar specialty stores; if certain requirements are met. Local ordinances can be more stringent.
- ATC to enforce. Class B infraction.





# Statewide Smoking Ban

Required signage beginning July 1, 2012

- Go to [www.in.gov/atc](http://www.in.gov/atc) for FAQ, general info and signs



This sign is in compliance with Indiana State law. — Indiana Alcohol & Tobacco Commission 2012



# **Extraterritorial Water / Sewer Rates**

*We have many unknowns about this bill*



# Exterritorial Water/Sewer Rates

## HEA 1126

- Outside users who pay more than 15% that of inside users have right to petition IURC.
  - EXAMPLE: If inside users pay \$14 for water, outside users will have the right to petition the IURC when their rates are \$2.10 higher. (This is regardless of whether outside users sought the service from the municipality and agreed to pay the negotiated rate in exchange the municipality agreeing to serve them outside.)
- Broad expansion of IURC regulation
  - Now brings units that have opted out of IURC back under IURC regulatory control.





# Exterritorial Water/Sewer Rates

## HEA 1126

- IURC has 120 to review the petition
  - Keep this in mind when you are planning projects – if there is a petition, your project will be delayed and you will likely incur expense!
- All ratepayers will bear the cost of the legal proceeding at the IURC. \$\$





# Exterritorial Water/Sewer Rates

Where the statute isn't clear ....

- While water rates are included under the provisions of the bill, there is a strong argument that municipal sewer rates are not included.
- Many times municipalities agree to serve outside users on the condition that they pay for hook-on fees/capital surcharges. Hook-on fees are usually considered to be separate from “rates and charges.” It is unclear, however, in the new legislation as to whether municipalities can *exclude* hook-on fees in calculating the differential. If they can't exclude hook-on fees, this means most outside users will be able to petition and potentially delay all rate increases/projects.
  - The law states the IURC cannot take hook-on fees into account when considering whether rates and charges are just and reasonable, but this is after the fact – when the petition is under review.





# Exterritorial Water/Sewer Rates

Grandfathering provision for differentials up to 50%  
- *may* petition IURC by September 30, 2012:

- This provision was passed applying to water *and sewer* rates and charges.
- As explained by the IURC lobbyist, this process was to simply be an automatic approval of any differential that was up to 50% if petition was made during the grandfathering period.





# Exterritorial Water/Sewer Rates

Grandfathering provision for differentials up to 50% - *may* petition IURC by September 30, 2012:

- Where the statute isn't clear:
  - How do you calculate differential and know whether you should go to the IURC for this approval? Do you count hook-on fees or not?
  - To “petition” normally means consideration of evidence, a full rate hearing, etc. Will this be required or will it be an automatic approval?
  - Two cases are currently pending before the IURC, so we will wait and see, but time is of the essence.





# E911 – IACT Initiative

## SEA 345

- Statewide 13 member board
- Switch from local collection to statewide collection (landlines)
  - \$.90 on landline and monthly wireless
  - .50 on prepaid wireless
- Distributions will be made monthly
- *Hold harmless provision* - 3 year average
- Relationship between counties/cities and towns to be studied by IACIR.



# Notice Requirements for Mowing - IACT Initiative

## Streamline Notification Requirements for Ordinance Enforcement (HEA 1072)

- Previous law provided that a certified notification be sent to a property owner for each mowing.
- Now, one certified letter is sufficient – can reference a “continual abatement notice” – additional mowings that season can be noticed by posting at the property.





# Abandoned Properties – IACT Initiative

## HEA 1238

- Allows creditor or enforcement authority to petition the court to find a mortgaged property abandoned.
- Certain specified conditions of the property constitute prima facie evidence that the property is abandoned.
  - The debtor's failure to either: (1) present written evidence or objections on the issue of abandonment before the appearance date; or (2) appear before the court on the appearance date; constitutes prima facie evidence that the property is abandoned.





# **Timely Movement of Utility Lines - IACT Initiative**

- Utility Companies that Fail to Move Lines in a Timely Manner (SEA 212)
  - Utilities shall keep contact information up to date with INDOT.
  - Web-based accessible list to be made available by INDOT.
  - Regulatory Flexibility Interim Committee to study the issue this summer/fall.





# Cable Franchise Fees

- Franchise fees are paid by cable companies for use of right-of-ways.
- 2006 Telecom Reform Act gave cable companies new opportunities to generate millions of dollars of new revenue. The agreement with cities and towns was to keep franchise fees in place.
- Now, cable companies want to cease paying the fees to local citizens for use of their right-of-ways. Cable companies supported HEA 1280.
- HEA 1280
  - Added annual reporting to IURC
    - Receipts and Uses of franchise fees





# Aquifers

## SEA 132

- Requires water utilities to annual submit information to the IURC.
  - Water resources, operations and maintenance costs, number of customers, description of service territory, funding received from state and federal gov't, etc.
- Removes local control to regulate underground aquifers.
- Overturned a 5-0 Supreme Court decision in favor of the Town of Avon.
- Now anyone can drill and take the local water supply without intervention (DNR has very limited regulation).





# Municipal Elections

## SEA 233

- Provides that if there is a contested election for any office of a municipality, all nominees for each office must be shown on the ballot.
- An election may not be held if there is no contest for the office if county election board unanimously approves.
- A municipal election may be limited to legislative body districts where there are contested races by unanimous vote of the county election board.





# Local Price Preference

## HEA 1154

- Repeals local price preference law for public works projects.
- Price preference for purchases applies only if the political subdivision provides in the solicitation that the preference is applicable to the purchase.
- Makes uniform at \$150,000 the threshold for public works projects which require a public bids process versus quotes





# Ethics/Disclosure

- SEA 193
  - Requires a statement of economic interest to be filed with a candidate's declaration of candidacy.





# Outdoor Staging Equipment

## SEA 273

- As of March 16, 2012, outdoor stage equipment is defined as a Class 1 structure and will be regulated and inspected by the Indiana Department of Homeland Security (IDHS).
- Applies to private and public venues.
- On May 3, IDHS adopted emergency rules which are now in effect.





# Outdoor Staging Equipment

- While outdoor temporary stages (up for 90 days or less) have always required state inspection, the new rules provide for regulation and inspection outdoor staging *equipment* (temporary or permanent towers, booms, ramps, platforms, overhead assemblies, or other structures, including ancillary rigging that is used or is intended to be used in connection with outdoor performance and is not otherwise attached or anchored to a stage).
- Requires 14-day notice to the state fire marshal's office prior to the event.
- Information about regulation and inspection of outdoor staging equipment and temporary stages can be found at [www.in.gov/dhs](http://www.in.gov/dhs)





**Thank You!**