

ICCTA Action Alert

August 11, 2008

Gov. Rod Blagojevich has **vetoed House Bill 4189**, the community college local control and ethics legislation. HB 4189 clarifies that community college districts are units of local government and not state agencies under the State Officials and Employees Ethics Act.

ICCTA had requested that the Governor approve HB 4189, but Gov. Blagojevich vetoed the bill for the second year in a row. HB 4189 received a vote of 91-14 in the House and 58-0 in the Senate. Last year's legislation, HB 3504 (which was identical to this year's HB 4189), was also approved by both houses of the General Assembly by large margins.

ICCTA is planning to coordinate efforts to override the Governor's veto of this legislation.

*** For additional legislative updates, call ICCTA at 1-800-454-2282 ***

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The Honorable Rod R. Blagojevich
Governor
207 Statehouse
Springfield, IL 62706

June 30, 2008

Dear Governor Blagojevich,

I write to ask you to approve **House Bill 4189**. The bill amends the State Officials and Employees Ethics Act to clarify that community college districts are units of local government that must adopt resolutions regulating the political activities and the solicitation and acceptance of gifts by their officials and employees. In addition to the Illinois Community College Trustees Association, The Illinois Council of Community College Presidents, 39 community college districts, Illinois Federation of Teachers, and the Illinois Education Association all demonstrated support for this clarifying legislation. **There is no known opposition to this bill.**

The 2003 State Officials and Employees Ethics Act revised Illinois laws regulating the ethical conduct, political activities, and giving and receiving of gifts by state officials and employees. The Act also included provisions for units of local government and established an enforcement structure (including criminal penalties) to ensure compliance with the new laws. Every community college district in Illinois has complied with the **local government** provisions of the Act and established their own ethics codes and commissions as required in the Act.

On October 5, 2005, the Illinois Attorney General issued a legal opinion stating that under the current language of the State Officials and Employees Ethics Act, community college districts fall within the definition of **state agencies** (rather than “units of local government”) and that their employees are **state employees** (rather than employees of local units of government). This opinion conflicts with the otherwise universal description of community colleges as units of local government. Community college districts have long been local entities governed by locally elected board members.

Please approve HB 4189 to clarify that community colleges are units of local government under the State Officials and Employees Ethics Act.

Sincerely,

Michael Monaghan
Executive Director

HB 4189

Community Colleges

Synopsis:

Amends the State Officials and Employees Ethics Act. Classifies community college districts as units of local government that must adopt resolutions regulating the political activities and the solicitation and acceptance of gifts by their officials and employees. Effective immediately.

Sponsors:

House: Representative Robert Pritchard and others
Senate: Senator Edward Maloney and others

House vote: 91 - 11 - 1
Senate Vote: 58 - 0 - 0

Supporting HB 4189:

Illinois Community College Trustees Association
Illinois Council of Community College Presidents
39 community college districts
Illinois Federation of Teachers
Illinois Education Association

Opposing HB 4189:

None known

Background:

The 2003 State Officials and Employees Ethics Act revised Illinois laws regulating the ethical conduct, political activities, and giving and receiving of gifts by state officials and employees. The Act also included provisions for units of local government and established an enforcement structure (including criminal penalties) to ensure compliance with the new laws.

One section of the Act specifically applies to **“units of local government”** and requires them to adopt ethics regulations. Every community college district in Illinois has complied with the **local government** provisions of the Act and established their own ethics codes and commissions as required in the Act. This was done because Illinois community college districts are described as units of local government in all citations throughout the Illinois Compiled Statutes. A different section of the Ethics Act applies to state agencies and state employees.

On October 5, 2005, the Illinois Attorney General issued a legal opinion. Based on the definition of the Higher Education Cooperation Act, the Attorney General stated that under the State Officials and Employees Ethics Act, community college districts fall within the definition of **state agencies** (rather than “units of local government”) and that their employees are **state employees** (rather than employees of local units of government). This opinion conflicts with the otherwise universal description of community colleges as units of local government. Community colleges have long been considered local entities governed by locally elected board members.

Issue:

The State Officials and Employees Ethics Act appears to embody ambiguous language that both includes and excludes community college districts in the definition of a state agency.

Current law defines a state agency as follows:

*"State agency" includes all officers, boards, commissions and agencies created by the Constitution, whether in the executive or legislative branch; all officers, departments, boards, commissions, agencies, institutions, authorities, **public institutions of higher learning as defined in Section 2 of the Higher Education Cooperation Act** and bodies politic and corporate of the State; and administrative units or corporate outgrowths of the State government which are created by or pursuant to statute, **other than units of local government** and their officers, school districts, and boards of election commissioners; ...*

Community college districts were inadvertently included in the definition of a state agency through their inclusion in Section 2 of the Higher Education Cooperation Act. They appear to be excluded from the definition of a state agency in the same sentence because they are units of local government.

Considering community college districts to be state agencies and their employees to be state employees causes local government employees, who are not state employees, to comply with many of the ethics requirements of state employees. The requirements are very different from the local government requirements because they are governed differently. **This classifies community college districts differently than all of the other units of local government in Illinois, such as school districts or local municipalities.**

In addition, the section of the Ethics Act dealing with state agencies is not compatible with the operations of community college districts, which are locally-governed, locally-controlled entities. It adds another layer of bureaucracy for the 38,000 community college employees and empowers a state entity to supercede locally adopted ethics codes and personnel policies.

In effect, the opinion singles out and treats community college districts differently than any other unit of local government, such as school districts, municipalities or townships.

Remedy:

House Bill 4189 clarifies that community college districts are units of local government under the State Officials and Employees Ethics Act. The bill clearly excludes community college districts from the definition of state agencies and clearly includes community college districts in the definition of units of local government.

Signing House Bill 4189 into law would render moot an issue currently pending before the Second Appellate Court. A number of community colleges have initiated a legal action based on the ambiguity of the definition of a state agency described herein. That case remains pending before the court.

For additional information, please contact:

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