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FISCAL IMPACT STATEMENT

LS 7054

BILL NUMBER: HB 1400

NOTE PREPARED: Jan 9, 2024

BILL AMENDED:

SUBJECT: Bullion Depositories and Legal Tender.

FIRST AUTHOR: Rep. Lindauer

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill defines "bullion" as refined silver or gold, in any shape or form, that has certain specified characteristics. It defines "specie" as bullion that is fabricated into products that are:

- (1) of uniform shape, size, design, content, weight, and purity; and
- (2) suitable for, or customarily used as, currency or a medium of exchange.

The bill defines "specie legal tender" as:

- (1) specie coin issued by the United States government at any time; or
- (2) any other specie that a federal court determines to be within state authority to make or designate as legal tender under Article 1, Section 10 of the Constitution of the United States.

Bullion Depositories - The bill authorizes the Treasurer of State (Treasurer) to establish one or more bullion depositories to provide a secure location for the storage of bullion. It provides that if the Treasurer establishes one or more bullion depositories, the Treasurer shall designate or engage an administrator to oversee the operation and management of the bullion depositories established.

The bill provides that a person may:

- (1) establish a bullion depository account with a bullion depository by entering into a depository agreement with the bullion depository; and
- (2) purchase, sell, deposit, or withdraw bullion through the holder's bullion depository account.

The bill provides that a bullion depository qualifies as a state depository and is eligible to receive public funds of: (1) the state; or (2) a political subdivision; on deposit. The bill requires the administrator to perform certain record keeping and retention duties with respect to: (1) bullion depository accounts; and (2)

transactions associated with bullion depository accounts. The bill requires a bullion depository to: (1) adopt and implement certain security measures; and (2) maintain insurance coverage to cover the full value of all bullion stored at each of its physical locations. It requires each bullion depository to be audited by an independent third party auditor on a semiannual basis.

The bill provides that a bullion depository established under these provisions may not be terminated or transferred to a private entity unless the termination or transfer is:

- (1) executed in a manner to protect:
 - (A) the security of the bullion on deposit;
 - (B) the rights of bullion account holders; and
 - (C) the financial interests of the state and any affected political subdivision; and
- (2) authorized by an act of the General Assembly.

The bill establishes certain reporting requirements for: (1) the administrator; and (2) the Treasurer; concerning bullion depositories established under these provisions. It requires the Treasurer to adopt guidelines to implement and administer these provisions.

Electronic Currency - The bill requires the Treasurer to establish an electronic currency backed by: (1) specie legal tender; or (2) other bullion designated by the Treasurer; to the extent of the Treasurer's authority to do so under Article 1, Section 10 of the Constitution of the United States. The bill requires the Treasurer to maintain enough specie legal tender or other designated bullion to provide for the redemption in specie legal tender or other designated bullion of all units of the electronic currency issued. The bill requires the administrator to determine, at the time of each transaction involving the issuance or redemption of electronic currency, the value of a unit of electronic currency in legal tender (other than specie legal tender) based on market price.

Legal Tender - The bill provides that: (1) specie legal tender; and (2) electronic currency; are recognized as legal tender in Indiana. It provides that except as otherwise specifically provided by law or contract, a person may not compel any other person to tender or accept specie as legal tender. The bill provides that a prevailing party in an action for breach of any contract provision that expressly designates a type or form of specie as tender is entitled to specific performance of the contract provision.

Tax Exemption - It provides that bullion is: (1) not subject to assessment and taxation under Indiana's property tax statute; and (2) exempt from the State Gross Retail Tax. The bill provides that the exchange of one type or form of legal tender for another type or form of legal tender is exempt from the State Gross Retail Tax.

Effective Date: July 1, 2024.

Explanation of State Expenditures: *Bullion Depositories* - If the Treasurer established one or more bullion depositories, they would likely be an instrumentality of the state. The bill contains provisions on the operations, powers, responsibilities, account maintenance, and accounting of specie deposited in a depository. The Budget Committee must review the contracts, with public and private entities, entered into by the Treasurer for the provision of services. The bill states a bullion depository established by the Treasurer may not be terminated or transferred to a private entity unless authorized by the General Assembly. The cost of the infrastructure and staff to establish and operate the bullion depositories would likely be significant.

Electronic Currency - The bill requires the Treasurer to establish an electronic currency backed by specie legal tender. The Treasurer may contract with a private vendor to implement this provision. The contracts would also be subject to review by the Budget Committee. The initial investment and ongoing costs would likely be significant. The ongoing costs could be offset by any authorized transactions fees.

Legal Tender - A state agency would incur additional costs if it chose to accept specie legal tender or the state established electronic currency for certain transactions. The initial investment in the necessary resources would likely be significant.

Additional Information - The bill allows silver and gold coins issued by the United States or other forms that a United States court determined could be designated as legal tender to be legal tender in Indiana. It also allows the Treasurer to establish an electronic currency that is backed by precious metal backed in a bullion depository account to be used as legal tender. The bill does not compel a person to accept or tender specie as legal tender unless otherwise specifically provided by law or contract. Under the Uniform Commercial Code, a person is an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

Explanation of State Revenues: *Tax Exemption* - This provision expands the existing sales tax exemption on certain coins and bullion to include all specie. This provision will decrease sale tax collections by an indeterminable but likely significant amount. It is unknown how much additional products would be purchased that do not currently qualify for the existing exemption, but the existing exemption is estimated to reduce annual collections by \$5.2 M. [Sales Tax revenue is deposited in the General Fund (99.838%), Commuter Rail Service Fund (0.131%), and Industrial Rail Service Fund (0.031%).]

The bill also exempts exchanging one type or form of legal tender for another type of legal tender. This could reduce sales tax collections depending on whether the tangible goods involved in the transaction would have qualified under the existing definition of legal tender. The bill defines legal tender as a recognized medium of exchange for the payment of debts, public charges, taxes, and dues.

Bullion Depository and Electronic Currency - Revenue may be collected from fees received from depository operations and transactions. The additional revenue is indeterminable and will depend on the policies established by the administrator, the contracts negotiated with private vendors, and customer activity. The bill is silent on how the money collected will be deposited.

Explanation of Local Expenditures: *Legal Tender* - A local unit would incur additional costs if it chose to accept specie legal tender or state established electronic currency for certain transactions. The initial investment in the necessary resources would likely be significant.

Explanation of Local Revenues: *Tax Exemption* - This provision should have no impact on property tax collections.

State Agencies Affected: All

Local Agencies Affected: All

Information Sources: Indiana Department of State Revenue, Sales Tax Information Bulletin #50, Sales of Coins, Bullion, or Legal Tender, <https://www.in.gov/dor/files/sib50.pdf>; Legislative Services Agency,

2022 Indiana Tax Expenditure Review,
https://s3.us-east-2.amazonaws.com/iga-publications/tax_expenditure_report/2023-06-22T17-16-33.740Z-2022%20Tax%20Expenditure%20Review.pdf; Missouri State Senate SB 100, Fiscal Note,
https://www.senate.mo.gov/23info/BTS_FiscalNotes/index.aspx?SessionType=R&BillID=44521

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