

Legislative

Update

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Indiana Municipal Power Agency 2010 Indiana General Assembly Legislative Wrap-Up

The 2010 “short” session of the Indiana General Assembly adjourned Sine Die just shy of 1:00 a.m. on Saturday March 13th. This was a busy, focused “short” legislative session. It was also an unusual session because of the economic situation of our state and our country. There was virtually no money to speak of for new programs and existing programs have been facing the threat of reductions for months. So Republicans and Democrats in both the Indiana House of Representatives and the Senate, and the Governor’s Office, were committed basically to a “do no harm” session, as the Governor phrased it.

Of the 800 or so pieces of legislation that were introduced this year, approximately 242 of them were still alive at the half-way point. After second chamber activity, there were 128 still surviving, with 85 slated to go to Conference Committee. In the end, 116 pieces of legislation were approved and sent to Governor Mitch Daniels for his signature into law.

Chief among the bills approved was putting the property tax caps into the state’s Constitution (HJR 1), government ethics reforms (HEA 1001), and a one year delay in the implementation of a \$400 million increase in unemployment insurance taxes on businesses in Indiana (SEA 23). Other legislative efforts that found their way to the Governor’s desk include: allowing the sale of alcohol on Election Day (SEA 75), allowing workers to bring firearms to their place of employment if they are kept in a locked vehicle, and enabling schools to tap into some property tax revenues to cover operating expenses in the face of state mandated funding reductions.

Some of the unsuccessful legislative proposals included the following: a statewide smoking ban, town-

ship and other local government reforms, texting while driving, and the creation of land-based casinos.

Specifically on the utility front, while many bills were of interest to municipal electricians, it was a relatively quiet session. The usual issues of concern did not rise to the top of chart this year. While several pieces of legislation dealing with renewable portfolio standards, fining ability of the Indiana Utility Regulatory Commission, rate adjustment mechanisms (trackers), and alternative renewable energy contracts (feed-in tariffs) were introduced, no action took place. A couple of other bills that were of interest but did not progress this year were House Bill 1177 and Senate Joint Resolution 15. HB 1177 would have provided for the statewide election of the Utility Consumer Counselor, but was reduced to a request for the Regulatory Flexibility Study Committee to take a look at the concept. SJR 15 would have provided that the Indiana Senate would have confirmation power over appointments to the IURC and the Utility Consumer Counselor. That did not receive a hearing.

Of primary note, there was much discussion and debate on the issue of **net metering**. Both the House of Representatives and the Senate passed bills out of their respective chambers addressing this issue. Municipal electric utilities were exempted from the provisions in both bills. Late in the session, Senate Bill 313 was combined with a modest renewable electricity standard but ultimately, no compromise could be worked out during the waning hours of the session. No legislation addressing net metering passed this year.

Legislation of General Interest:

House Joint Resolution 1 – Circuit Breakers and Property Tax Matters

This joint resolution places the 1-2-3 percent property tax cap referendum onto the ballot in November 2010 and if approved, will put those caps into the state's Constitution. It requires, for property taxes first due and payable in 2012 and thereafter, the General Assembly to limit a taxpayer's property tax liability as follows: (1) a taxpayer's property tax liability on homestead property may not exceed 1 percent of the gross assessed value of the homestead property; (2) a taxpayer's property tax liability on other residential property may not exceed 2 percent of the gross assessed value of the other residential property; (3) a taxpayer's property tax liability on agricultural land may not exceed 2 percent of the gross assessed value of the property that is the basis for the determination of the agricultural land; (4) a taxpayer's property tax liability on other real property may not exceed 3 percent of the gross assessed value of the other real property; and (5) a taxpayer's property tax liability on personal property may not exceed 3 percent of the gross assessed value of the taxpayer's personal property that is the basis for the determination of property taxes within a particular taxing district. HJR 1 specifies that property taxes imposed after being approved by the voters in a referendum shall not be considered for purposes of calculating the limits to property tax liability under these provisions. It provides that in the case of a county for which the General Assembly determines in 2008 that limits to property tax liability are expected to reduce in 2010 the aggregate property tax revenue that would otherwise be collected by all units and school corporations in the county by at least 20 percent, the general assembly may provide that property taxes imposed in the county to pay debt service or make lease payments for bonds or leases issued or entered into before July 1, 2008, shall not be considered for purposes of calculating the limits to property tax.

House Enrolled Act 1001 – Government Ethics and Lobby Reform

This bill is the legislative ethics reform package, widely touted because it was enacted without Indiana having gone through any kind of scandal. It prohibits legislators from becoming lobbyists for one year after they have left office. The measure also requires university lobbyists to report tickets and/or gifts they give to legislators. Additionally, lobbyists will now be required to disclose more information including meals or gifts over \$50 in a day (was \$100) and it prohibits the Governor from raising campaign funds during the "long" budget-writing session of the General Assembly. This bill also defines "conflict of interest" for lobbyists and requires lobbyists to file with the Indiana Lobby Registration Commission a description of the procedure that will be utilized if conflicts should arise. That procedure must then be incorporated into the lobbyist's contract with clients.

House Enrolled Act 1065 – Firearms

This was a very controversial bill throughout the legislative session. The bill prohibits a person, including an individual, a corporation, and a governmental entity, from adopting or enforcing a policy that prohibits an employee, including a contract employee, from legally possessing a firearm or ammunition that is locked in the trunk of the employee's vehicle, kept in the glove compartment of the employee's locked vehicle, or stored out of sight in the employee's locked vehicle while the vehicle is in or on the person's property, unless the firearm or ammunition requires a certain federal license to possess. The measure does exempt possession of a firearm or ammunition: (1) on school property, on property used by a school for a school function, or on a school bus; (2) on certain child care and shelter facility property; (3) on penal facility property; (4) in violation of federal law; (5) on property belonging to an approved post-secondary educational institution; (6) on the property of a domestic violence shelter; (7) at

a person's residence; (8) on the property of a person that is subject to the United States Department of Homeland Security's Chemical Facility Anti-Terrorism Standards and licensed by the United States Nuclear Regulatory Commission; (9) on property owned by a public utility that generates and transmits electric power or a department of public utilities; and (10) in an employee's personal vehicle if the employee is a direct support professional who uses the employee's personal vehicle while transporting an individual with developmental disabilities. HEA 1065 provides that a court does not have jurisdiction over an action that: (1) is brought against an employer who is in compliance with the prohibition against adoption or enforcement of a policy that prohibits the possession of a firearm in a locked vehicle; and (2) is brought to recover for any injury or damage resulting from the employer's compliance. Authorizes a person harmed by a violation to bring a civil action for damages, costs, attorney's fees, and injunctive relief to remedy a violation. The bill prohibits the state, a political subdivision, or any other person from prohibiting or restricting the lawful possession, transfer, sale, transportation, storage, display, or use of firearms or ammunition during a declared disaster emergency, energy emergency, or local disaster emergency, subject to exceptions that apply to the prohibition against adoption or enforcement of a policy or rule that prohibits the possession of a firearm in a locked vehicle. It repeals provisions that allow certain political subdivisions to adopt emergency ordinances to regulate firearms if a local disaster emergency has been declared.

House Enrolled Act 1205 – Merger of PERF and TRF

This legislation merges the Public Employees' Retirement Fund (PERF) and the Teachers' Retirement Fund (TRF). It requires the Board of Trustees of PERF and the Board of Trustees of TRF to appoint and fix the compensation of a common director for PERF and TRF, and

each will pay 50 percent of the director's compensation. The bill requires the PERF and TRF boards to cooperate to the extent practicable and feasible in administering and investing the assets of the funds and in hiring investment managers, investment advisors, and other service providers. It provides for a thirteenth check for PERF and TRF members, survivors, and beneficiaries. It also provides for a thirteenth check for employee beneficiaries of the state police 1987 benefit system who retired or were disabled after June 30, 1987, and before July 2, 2008, and were entitled to receive a monthly benefit as of June 1, 2010.

House Enrolled Act 1367 – Education

This bill permits a school corporation that elects to provide coverage under a state employee health plan to active and retired employees without providing coverage to individuals who retire from the school corporation before July 1, 2010. It also requires schools to give priority in the allocation of resources to remediation programs to students who are deficient in reading skills in grade 1 through grade 3. The State Superintendent of Public Instruction in conjunction with the State Board of Education is required to develop a plan to improve reading skills of students and that plan must include reading skill standards for grade 1 through grade 3. A main component of HEA 1367 will allow the governing body of a school corporation to adopt a resolution to transfer money between funds held by the school corporation in the 2010-2011 school year in order to preserve and protect instructional programs. Under this legislation, and in the face of significant school funding cuts, schools will be able to transfer up to 5 percent of certain property tax revenues that go toward such things as transportation and capital projects and direct them toward classroom and operating expenses. If teachers agree to not take pay increases, the school corporations could transfer an additional 5 percent from those funds.

Senate Enrolled Act 23 – Unemployment Insurance Taxes/Jobs

The issue of the employment insurance tax increase that was to have gone into effect in April of this year loomed large over the entire legislative session. The impending economic impact of that tax increase was significant, approximately \$400 million of additional tax imposed on Indiana businesses. The issue was so big that the session's conclusion in the final days really came down to whether legislators could work out a compromise. In the end, that compromise was found and a bill that delays the implementation of the unemployment insurance tax by one year was approved. Among the many provisions contained in SEA 23, tax credits are included to incentivize businesses to add jobs in Indiana and a "claw-back" provision so the State can reclaim tax incentives from businesses that don't maintain their commitments to create jobs and investments.

Senate Enrolled Act 75 – Alcoholic Beverage Laws

This bill does several things in the area of alcoholic beverage sales and permits. A few of those provisions include: 1) allowing a microbrewery to sell its beer for carryout on Sunday at the address for which the brewer's permit was issued; 2) allowing the sale of alcohol on election days; and 3) allowing the holder of a retailer's permit to sell alcoholic beverages on Sunday from 7 a.m. until 3 a.m. the following day. (Under current law, the holder of a retailer permit may sell alcoholic beverages on Sunday from 10 a.m. until 12:30 a.m. the following day).

Utility-Specific Legislation:

House Enrolled Act 1261 – Renewable Energy

This bill adds animal byproducts and algae and deletes organic waste from clean construction and demolition to the list of organic matter considered organic waste biomass for purposes of the definition of "renewable en-

ergy resources" in the utility generation and clean coal technology financial incentives statute (incentives statute). The measure makes changes to the name of the E85 fueling station grant program to the agricultural biomass infrastructure grant program (grant program). It also provides that "biomass" as defined under the grant program applies in the directive to the Indiana State Department of Agriculture to administer economic development efforts for agriculture by facilitating the use of biomass. The bill authorizes the Department of Agriculture to award grants from the agricultural biomass infrastructure grant fund for certain infrastructure used for the production or distribution of biofuels (fuels produced from biomass). It also provides that grants for biofuels projects may be awarded for infrastructure expenses incurred after December 31, 2009.

House Enrolled Act 1265 – Oil, Gas, Coal Bed Methane Property

This legislation defines "coal bed methane" and expands the definition of "commercially minable coal resource". The bill prohibits coal bed methane extraction before July 1, 2012, unless: (1) the owner of the coal from which the coal bed methane is extracted consents; or (2) the coal bed methane is extracted from a well that is operated under a permit issued by the department of natural resources. Finally, it requires the Natural Resources Study Committee to study certain oil, gas, and coal bed methane issues.

Senate Enrolled Act 93 – Yield When Approaching Certain Vehicles (Utility Vehicles)

The bill provides that the failure to use due caution when approaching a stationary utility service vehicle that is being used to perform utility services or a stationary road, street, or highway maintenance vehicle is a Class A infraction that may also result in the loss of driving privileges. Current law specifies that the failure to use due caution which will result in sanctions pertains ONLY to the failure to use due caution when approaching

a stationary recovery vehicle or a stationary highway maintenance vehicle. This legislation adds utility vehicles to the statute.

Senate Enrolled Act 126 – Merger of Rural Electric and Telephone Cooperatives

This legislation allows one or more rural electric membership corporations (REMCs) to merge or consolidate with one or more rural telephone cooperative corporations to form a surviving corporation (in the case of a merger) or a successor corporation (in the case of a consolidation). It provides that a surviving corporation or successor corporation: (1) is considered to be both an REMC and a telephone cooperative corporation; and (2) has all the rights, powers, privileges, immunities, and exemptions of an REMC and a telephone cooperative corporation. It sets forth provisions concerning the following with respect to a surviving corporation or successor corporation: (1) articles of incorporation and bylaws; (2) selection of the board of directors; (3) general and enumerated powers of the board and the surviving corporation or successor corporation; (4) members and meetings of members; (5) obligations and liabilities of the surviving corporation or successor corporation; (6) the acquisition and disposition of property; (7) articles of dissolution; (8) charges for services rendered; and (9) the jurisdiction of the utility regulatory commission (IURC).

Political Preview

2010 is a significant election year. Half of the 50-member Indiana Senate and all 100 House members are up for re-election this coming fall. All nine US Representatives are seeking re-election, and with the surprise announcement last month that Senator Evan Bayh was not seeking re-election, there is now a US Senate seat for the State of Indiana up for grabs. It is going to be an exciting year from the primary in May to the general election in November!

The overall political climate at all levels

is volatile to say the least. The public's overall opinion of Congress is not good, the President's approval rating has fallen in recent weeks and months, and the voting populace is just plain mad. Will they take out their frustration in the voting booth in November? What makes the dynamics even more interesting is that during the 2011 session of the Indiana General Assembly, new legislative districts for the 100 House and 50 Senate members will be drawn and in place for the next 10 years. In addition to writing the next biennial state budget, legislative redistricting will be by far one of the most political and contentious issues that will be discussed next time around. The Senate will likely continue to enjoy a comfortable GOP majority, even though there are three open seats due to retirements. The House, however, will not be quite that easy. Currently Democrat-controlled by a 52-48 margin, this chamber tends to swing back and forth regularly. The campaign season will be spirited, and more than anything else, expensive. With 7 open seats in the House (also due to retirements), it is anyone's ballgame this year.

If you have questions, or if you would like additional information on any of the bills mentioned in this report, or on any other legislation that was considered by the General Assembly, please do not hesitate to contact Carolyn Wright, Vice President of Government and Member Services, Indiana Municipal Power Agency.

The IMPA Legislative Update is published by the Indiana Municipal Power Agency. For questions regarding legislative activities, please contact Carolyn Wright, Vice President of Government and Member Services for IMPA, at (317) 575-3873 or cwright@impa.com.