

# Legislative

# Update

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## 2008 Indiana General Assembly Legislative Wrap-Up

The 2008 “short” session of the Indiana General Assembly adjourned Sine Die at approximately 5:30 p.m. on Friday March 14<sup>th</sup>. This was, without doubt, a very busy and focused “short” legislative session. It was also a session of unusual – and welcomed – bipartisan cooperation and collegiality for the most part. Lawmakers on both sides of the political aisle, in both the Indiana House of Representatives and the Senate, and the Governor’s Office, were committed to addressing the number one issue facing the Indiana General Assembly this year – property tax reform. A big issue and not a lot of time in a short session to accomplish such a massive undertaking.

Since last year when property taxes across the State of Indiana increased more than 24%, lawmakers heard the outcry from taxpayers – loud and clear. Right out of the gate last fall it was predicted to be the “one” predominant issue that the legislature could absolutely not leave town without addressing. When the General Assembly met for its Organizational Day in November, it was apparent that legislators were definitely taking the issue seriously. Both the House and Senate fiscal committees began meeting in December to get a jump start on the process. During the final two weeks of the 2008 session, there was much speculation that there just would not be enough time to get the deal done in regulation – by March 14<sup>th</sup> – and provide real relief to taxpayers. While the words “special session” started to pop up, the spirit of commitment and cooperation took hold. Agreement was reached with 24 hours still remaining in the session. Overtime would not be needed.

Cue House Enrolled Act 1001 and Senate Joint Resolution 1. These are the two pieces of legislation that were negotiated over the final weeks and hours of the session dealing with property tax relief and re-

form. HEA 1001 offers up the nuts and bolts and SJR 1 is the mechanism by which these reforms are made permanent. Some of the key provisions of HEA 1001 and SJR 1 are:

- **Immediate Tax Relief for Homeowners:** Homeowners get \$870 million in additional homestead credits this year, with \$620 million coming from the increase in the state sales tax to 7% from 6%, and \$250 million coming from licensing fees for casinos. The sales tax increase takes effect April 1.
- **Homestead Credits:** This legislation increases the standard deduction for homeowners from the lesser of \$45,000 or 50% of assessed valuation to the lesser of \$45,000 or 60% of assessed valuation. It also creates a new supplemental homestead deduction of 35% of the next \$600,000 of assessed valuation after applying the standard deduction and 25% of the remaining assessed valuation over \$600,000.
- **Senior Citizen Protection:** Under the legislation, homeowners age 65 and older whose homes are valued at \$160,000 or less and whose incomes do not exceed \$30,000 per year for an individual or \$40,000 per year for a couple will have a stiffer cap on their property tax bill. In addition to the 1 percent cap in assessed value, their bills also could never grow more than 2 percent each year. Also, the working poor would see their earned income tax credit increase to 9 percent from 6 percent.
- **Income Tax Assistance for Renters and Working Poor:** Renters income tax deduction will increase to \$3,000 from \$2,500 under this legislation. Under this bill, the working poor will see their earned income tax credit increase from 6% to 9%. These tax breaks are intended to help lessen the impact of the sales tax increase.

- **Referendums:** This was probably the most controversial issues in the property tax debate this year. Voter approval will be required for high school projects that cost \$20 million or more; elementary and middle-school projects that cost \$10 million or more; and all other publicly financed projects that cost at least \$12 million or whose value equals at least 1 percent of a taxing district's assessed valuation.
- **Shifting Levies to the State:** The state, which already covers 85% of school general funds, will pick up the remaining 15%, as well as the cost of child welfare, juvenile incarceration, health care for the indigent, and pre-1977 police and fire pension funds.
- **Assessors:** The bill eliminates township assessors, except in townships with more than 15,000 parcels. Voters in those more populous townships can vote in a referendum to transfer those duties to the county assessor.
- **Permanent Caps:** Although the property tax caps will not go into the constitution immediately, they are placed into state law right away. Under the caps, homeowners' bills cannot exceed 1.5 percent of their home's assessed valuation in 2009 and 1 percent in 2010 and all future years. Rental and agricultural property are capped at 2.5 percent in 2009 and 2 percent in 2010; and business property at 3.5 percent in 2009 and 3 percent in 2010. The Constitutional amendment, SJR 1, if it is approved by two separately elected General Assemblies, would take effect Jan. 1, 2012. The state constitution would be amended to permanently cap homeowners' property tax bills at 1% of their home's assessed value; rental and farm property at 2%; and business property at 3%. Lake and St. Joseph counties -- the two hardest hit by the caps -- would be exempt from the full impact of the amendment through Dec. 31, 2019.
- **Sales Tax Increase:** To pay for the property tax reform plan, the sales tax in Indiana will increase on April 1<sup>st</sup> to 7% from 6%. This is anticipated to bring in about \$620 million.

Of the 770 pieces of legislation that were introduced this year, approximately 280 of them were still alive at the half-way point. Among the issues that had a fighting chance to survive was a measure that would have addressed the issue of

illegal immigration in Indiana. Compromise could not be reached as the hours grew short.

On the utility front, while many bills were of interest to municipal electrics, it was a relatively quiet session. Probably the most important piece of legislation that was of concern, and that was still being debated during the second half of the session, was a renewable portfolio standard (RPS) bill that would have required some electric utilities to provide a certain amount of power from renewable resources. Municipal electrics were exempted from the requirements of the bill throughout the discussions. During the conference committee process, the concept was kept afloat but there were too many differing views on what the percentages should be, as well as what should count toward a "renewable" or alternative resource standard. Ultimately, no RPS measure was successful. Also debated during the session, but ultimately not successful, were bills dealing with net metering, mandated green building standards and whether the state of Indiana should be mandated to join a national climate registry. In the end, 148 pieces of legislation were approved by the Indiana General Assembly and sent to the Governor for his signature into law (81 House bills, 66 Senate Bills and 1 Senate Joint resolution).

## Political Preview

While the session was busy and substance-packed, the reality is that 2008 is a significant election year. Half of the 50-member Senate and all 100 House members are up for re-election this coming fall. It is also a gubernatorial election, all 9 US Representatives are seeking re-election, and we will be casting a ballot for President. Big year, indeed.

The Indiana Senate is currently firmly in Republican control. It will likely remain so after the November election. The House, however, is a different animal. There is a 51-49 split, with Democrats hanging onto only a slight advantage. As is usually the case in the two-year House cycle, the power of the majority is up for grabs. Adding to the intrigue are the numerous retirements/resignations that both chambers are experiencing this year. In

the Senate, there are 5 retirements, 1 resignation and 1 Senator passed away. In the House, there are 9 retirements. That's about 10% of the total General Assembly right there, and that does not even begin to touch on all of the primary, and general election, winners and losers next November. The bottom line is the political pendulum could swing either way this coming fall, at all levels of government. After what promises to be an exciting election season, the make-up of the next Indiana General Assembly will likely be much different than it is now.

## **Legislation of General Interest:**

### **House Enrolled Act 1114 -- Police Officer and Firefighter Residency**

This bill establishes separate statutes that define general residency requirements for each of the following: (1) Members of city police and fire departments; (2) Members of town police and fire departments (excluding volunteer fire departments or members who are volunteer firefighters); and (3) Members of township fire departments (excluding volunteer fire departments or members who are volunteer firefighters). It provides that a town legislative body may adopt an ordinance or a township legislative body may adopt a resolution requiring a member of a police or fire department to live within the county in which the town or township is located or within a certain distance from the township or town. Additionally, the bill provides that such an ordinance or resolution may not apply to a member who does not comply with the requirements of the ordinance or resolution on the date the ordinance or resolution is adopted. A member appointed to a town metropolitan police department or town marshal system before July 1, 2008, may not be required to reside within: (1) the county in which the town is located; or (2) a county that is contiguous to the county in which the town is located; if the member resided within a noncontiguous county on July 1, 2008. Members of town police and fire departments may not use vehicles owned or maintained by their department outside the county except during the performance of official duties or as provided for by department regulation.

### **Senate Enrolled Act 334 Severe Weather Warning Sirens**

This bill requires the Department of Home-

land Security (DHS) to adopt rules before January 1, 2010 to establish: (1) minimum technical standards for severe weather warning sirens; (2) the circumstances under which a severe weather warning siren (siren) may be activated; (3) information required in a siren coverage report or siren coverage plan; and (4) other rules necessary to assess coverage of sirens in Indiana and determine the need for additional sirens. It requires the DHS, at the request of a county legislative body, to assist the county in development of a siren coverage plan. It permits the DHS to require a county that requests assistance in development of a siren coverage plan to develop a siren coverage report and specifies the content of a siren coverage report and a siren coverage plan. The DHS is required to assist a county that adopts a siren coverage plan to implementation of the plan and obtain federal and other grants to enable the county in implementation of the plan and requires the DHS to adopt certain rules not later than January 1, 2010.

### **Senate Enrolled Act 31 State Highway Property Acquisition**

This bill establishes notice and hearing procedures applying to the establishment by the Indiana Department of Transportation (IDOT) of rights-of-way for additions to the state highway system. It requires IDOT to comply with certain notification procedures relating to compensation to owners for damage done to real property by the department during the survey and investigation process.

### **House Enrolled Act 1153 Pull Tabs (Gaming)**

This bill specifies that type II gaming may be conducted by taverns that are issued a retailer's endorsement that is affixed to the tavern owner's alcoholic beverage permit. It specifies that the Alcohol and Tobacco Commission administers type II gaming. The measure provides that the authorized sale of pull tabs, punchboards, and tip boards (PPT) is exempt from the state gross retail tax. Any fees and civil penalties must be deposited into the excise enforcement and administration fund. Excise taxes must be deposited into the state general fund and the bill requires the Indiana

Gaming Commission to adopt rules to establish the manner in which a qualified organization may supervise certain euchre games. Specifically, the bill provides that a patron who deals the cards in the euchre game is not considered to be a worker or an operator for purposes of the charity gaming law. It requires a qualified organization to designate an individual to serve as the operator of a charity gaming event. A qualified organization holding an annual raffle license may conduct raffles at any time during a period of one year. Certain qualified organizations are qualified to conduct winner take all drawings under a PPT license. The bill stipulates that certain slot machine revenues paid to horsemen's associations may not be used for political contributions or lobbying.

## **IMPA Tracked Energy/Utility-Related Legislation**

### **Senate Resolution 23 Tree Trimming and Other Work by Utilities**

This simple Senate Resolution was adopted by voice vote and urges the Legislative Council, which is the governing arm of the General Assembly when the legislature is out of session, to direct the Regulatory Flexibility Study Committee to take a look at the work that utilities must perform and the impact that work has on private property. This would include tree trimming practices, among others, including the installation of cables, wires, etc.

### **Senate Enrolled Act 343 Theft of Copper and Other Valuable Metals**

This bill requires the sentencing policy study committee to study issues related to the theft of copper, including the effectiveness of recent statutory changes and the need to educate valuable metal dealers about new requirements for purchasing copper and other valuable metals.

### **House Enrolled Act 1280 Green Buildings Study**

This measure began as a mandate to construct buildings and other structures in compliance with certain green building standards, i.e. the US Green Building Council's LEED program and others. As it was passed, it was changed to require the Environmental Quality Service Council (EQSC)

to study: (1) whether public entities should be required or encouraged to seek to achieve energy and environmental design ratings in the construction and renovation of buildings and structures; and (2) other related issues.

### **Senate Enrolled Act 360 E85 Fueling Station Grants**

This bill provides that only one E85 fueling station grant may be made per fueling station location, and that the amount of a grant may not exceed the lesser of the amount of the qualified investment or \$20,000. It provides that the amount of a grant may be less than the amount of the qualified investment. Additionally, it provides that local units of government are eligible to receive E85 fueling station grants for qualified investment in E85 fueling stations.

### **House Enrolled Act 1062 Architectural Salvage Material and Valuable Metal Dealers**

This bill prohibits an architectural salvage material dealer (dealer) from purchasing or otherwise obtaining architectural salvage material: (1) from a person who is less than 18 years of age; or (2) that the dealer believes or should have reason to believe is stolen property acquired as a result of a crime. It requires a dealer to keep a record book that contains certain information concerning architectural salvage material received by the dealer and they must hold the material for at least five business days if the dealer receives written notice from a law enforcement agency to hold the material. The bill allows law enforcement officers to inspect and obtain records from a dealer. This measure makes it a Class A infraction for a person to violate a provision of the architectural salvage material dealers law. With passage of HEA 1062, the valuable metal dealers law applies to all ferrous metals and nonferrous metals. It specifies that a sheriff or deputy authorized by the sheriff in writing may supervise and inspect pawnbrokers, vendors, and certain other merchants who may sell secondhand material, and requires the Legislative Council to assign to the sentencing policy study committee the topic of the theft of salvaged material.

### **Senate Enrolled Act 223 Coal Gasification and Substitute Natural Gas**

This bill provides that a taxpayer awarded a coal gasification technology investment tax credit may agree to use less than 100% Indiana coal in the qualifying coal gasification project and qualify for the credit if the taxpayer: (1) wishes to assign the tax credit; and (2) certifies to the Indiana Economic Development Corporation (IEDC) that partial use of other coal is necessary to result in lower rates for Indiana retail utility customers. The bill changes the definition of “substitute natural gas” to include gas: (1) produced by a facility outside Indiana; and (2) converted from coal from a location other than the Illinois basin. It changes the definition of a “customer choice program” to include customers located in the service area of an electric utility. Additionally, it provides that when substitute natural gas (SNG) purchase obligations are proportionally assigned due to a customer choice program, the assignee must meet the assignment requirements in the previously approved contract for purchase of the SNG.

### **Senate Enrolled Act 226 Surplus Municipal Utility Property and Utility Services Provided by Landlords**

This bill provides that a municipality that seeks to sell or dispose of non-surplus municipally owned utility property must adopt an ordinance appointing three Indiana residents to serve as appraisers, as follows: (1) One disinterested person who is a licensed engineer; (2) One disinterested person who is a licensed appraiser; and (3) One disinterested person who is either a licensed engineer or a licensed appraiser. (Current law provides for the appointment of one disinterested freeholder who is a resident of the municipality and two disinterested licensed appraisers).

The bill eliminates the requirement that one of the licensed appraisers must reside not more than 50 miles from the property and provides that if the municipality decides to proceed with the sale or disposition after the return of the appraisal, the municipality shall, not later than 45 days after the return of the appraisal, hold a public hearing to do the following: (1) Review and explain the appraisal; (2) Receive public comment on the proposed sale or

disposition; and (3) Adopt an ordinance for the sale or disposition. (Current law: (1) requires the municipality to publish notice of a hearing on the ordinance not later than 15 days after the return of the appraisal; and (2) prohibits the municipality from holding the hearing until 30 days after the notice is given.) The municipality is not required to adopt an ordinance if, after the hearing, the municipality determines it is not in the interest of the municipality to proceed with the sale or disposition. A municipality is allowed to proceed to sell or dispose of the property if: (1) the municipality adopts an ordinance providing for the sale or disposition; and (2) a petition opposing the sale or disposition is not filed within 30 days after the notice of hearing. (Current law provides that a municipality shall proceed to sell or dispose of the property if a petition is not filed within the 30 day period.)

Additionally, a provision was added to this bill that provides that a municipal utility may not issue bonds, notes, or other obligations without the approval of the utility regulatory commission (IURC) if the bonds, notes, or other obligations are payable more than 12 months after their execution. (Current law requires the IURC to approve any bond issue of a municipal utility.) Finally, the bill provides that a landlord that distributes water or sewage disposal service from a public or municipally-owned utility to one or more dwelling units is not a public utility solely by reason of engaging in such activity if: (1) the landlord bills tenants separately from rent for the services distributed; (2) the total charge for the services is not more than what the landlord paid the utility for the same services, less the landlord’s own use; and (3) the landlord provides the tenant with a written disclosure that meets specified requirements. A complaint may be filed with the Indiana Utility Regulatory Commission (IURC) alleging that a landlord is acting as a public utility. The IURC is then required to: (1) consider the complaint; and (2) if the IURC considers it to be necessary, enter an order requiring a billing adjustment.