

# Legislative

# Update

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## Indiana Municipal Power Agency/Indiana Municipal Electric Association 2009 Indiana General Assembly Legislative Wrap-Up

### Another Interesting and Unique Legislative Session, but It's Not Over!

The 2009 regular session of the Indiana General Assembly concluded in its usual dramatic fashion just shy of midnight on Wednesday April 29th, with the House of Representatives and the Senate adjourning Sine Die. Unfortunately, not all business was concluded and there will be a special session called by Governor Mitch Daniels in the coming days. Left unresolved – the 2009-2011 biennial state budget, ironically the only thing the General Assembly is required to do during the “long” legislative session.

The economic situation facing this state and the country set the 2009 session apart from others in recent memory. Going into this budget writing session, the budget forecast that lawmakers look to for guidance caused alarm. The state has been in a declining revenue situation for some time. Given the current state of the overall economy, the budget process has been difficult at best. The economic situation has not really improved over the last four months. It is already an arduous task to craft a state budget, and now coupled with the events of the last day of session and all of the emotions that have been brought to the forefront, it certainly is not going to get any easier during a special session.

It is true that no two legislative sessions are the same. Sure, the basics of the process are constant, but every legislative session has its own unique flavor, influenced by the leaders and the political climate of the day. The 2009 session was no exception. Many will say this was one of the more ugly conclusions to a session. The biggest issues remained in question right up to the bitter end, while

other issues found resolution in a more timely manner. The tapped-out unemployment insurance fund was addressed late into the evening when House Bill 1379 won approval in the Senate (46-3) and in the House (52-47). One other controversial and emotional measure dealing with the regulation of puppy mills in the State of Indiana, House Bill 1468, was addressed on the last day, as well. Throughout the session, teen drivers and cell phone use received a great deal of attention. During the final hours of the session, Senate Bill 16 was approved. The bill provides that teens must wait a little longer to get their drivers' licenses and requires teen drivers to stay off of their cell phones until they are 18 years old.

Partisanship and ideological differences were on display throughout the session, not just with regard to the budget process, but on other major issues, as well. Placing property tax caps into the Indiana Constitution and local government reform were hot button issues throughout, although neither received final consideration this year. The General Assembly still has next year to deal with the constitutional property tax cap matter and still have it be eligible for the ballot in the 2010 election. The last big issue left unresolved at the end deals with the Marion County Capital Improvement Board, which is Indianapolis' sports board. The CIB is struggling financially.

On the energy and electric utility front, this was an interesting session. The Indiana Municipal Power Agency and the Indiana Municipal Electric Association tracked all legislation dealing with

energy resources and the electric utility industry. We kept an eye on anything that had any kind of an impact on IMPA and municipal electrics in general. There were several pieces of legislation introduced dealing with renewable energy, net metering, energy savings contracts, and cost recovery for low and no carbon emitting resources, among other issues. The possible enactment of a mandated renewable portfolio standard (RPS) was once again a hot-button issue for us this year. Municipal electrics were not covered by the provisions contained in the RPS bills that progressed through the process, but those bills ultimately did not pass. Nonetheless, we kept a vigilant eye on them. When the final gavel fell, no RPS bill passed. There was also quite a bit of discussion surrounding the issue of net metering in Indiana. Legislation that would have made significant changes to the current IURC rule, including increasing the capacity threshold, broadening the customer class to whom the net metering rules apply, and expanding the renewable resource type, did not receive final approval before adjournment sine die of the legislature.

In the end, of the 1,319 pieces of legislation that were introduced, 184 bills made it through the entire process. There's no budget yet. No local government reform. But there is now an official unofficial state pie (Senate Resolution 59)!

## Of General Interest:

### **House Enrolled Act 1230 – Publication of Notices**

This bill requires a notice published in a newspaper to also be posted on the newspaper's Internet web site, if the newspaper maintains an Internet web site. Additionally, it prohibits a newspaper from charging a fee for posting of the Internet notice. It eliminates the requirement that a city publish the ordinance setting the salaries of elected city officers and it requires all political subdivisions with a budget of at least \$300,000 and the power to levy a tax to publish an annual report (if not required under any other statute to publish an

annual report). HEA 1230 allows the officers of a political subdivision publishing notice to publish in only one newspaper in the political subdivision (instead of two newspapers), if only one newspaper is published in the political subdivision. After December 31, 2009, a newspaper or qualified publication is allowed to annually increase the basic publication charges that were in effect during the previous year by no more than 2.75%. Under this legislation, public notice advertisements are required to be in at least 7 point type. Eliminated in this bill is the requirement that counties must publish claims (except for court allowances) before payment. Finally, HEA 1230 allows the board of public works and safety of a third class city to consist of three or five members (as determined by the mayor). It requires a second class city and a third class city to publish notice that the total number of board members has been increased or decreased.

### **House Enrolled Act 1483 – Off-road Vehicles, Farm Wagons and Golf Carts**

This bill defines "farm wagon" as including three, four, and six-wheeled motor vehicles with a folding hitch that is used for certain purposes. It prohibits a certain type of farm wagon from operation on an interstate highway, or a state highway, except under specific circumstances. An individual must be at least 15 years old to operate a motorized farm wagon on a highway, and the bill prohibits the use of a motorized farm wagon operated on a highway to tow another vehicle. Significantly to municipalities, this bill prohibits an individual from operating a golf cart on a highway, except when a city or town has adopted an ordinance authorizing the use of golf carts on the city or town's highways. The ordinance: (1) may require that a golf cart display a slow moving vehicle sign or a red or amber flashing lamp; and (2) must require an individual operating a golf cart in the city or the town to hold a driver's license. Proof of insurance is required for golf carts operated pursuant to an ordinance. Additionally, a person who removes a wrecked or damaged golf cart from a highway is required to remove any debris that may have fallen on the highway.

### **Senate Enrolled Act 16 – Teen Drivers/cell phone use**

This bill increases, under certain circumstances, the minimum age for the issuance of a learner's permit and a probationary operator's license. It sets out requirements for practice driving before an operator's license can be issued. Most notably, SEA 16 prohibits a driver under the age of 18 from driving a vehicle while using a telecommunications device (cell phone), except for making a 911 emergency call. The measure also revises the period during which certain passengers may not accompany a probationary driver, the hours when nighttime driving is prohibited by certain probationary drivers. The state board of education and the criminal justice institute are required to adopt rules specifying that the classroom portion of driver's education may not be provided to a child less than 15 years and 180 days of age. It also stipulates that the holder of a probationary license is ineligible for pretrial diversion or deferral with respect to certain alleged offenses and infractions involving motor vehicles. This bill also establishes an interim study committee on driver education.

### **Senate Enrolled Act 448 – Personal Property Taxes**

This bill provides that enterprise information technology equipment purchased after June 30, 2009, by an eligible business is exempt from personal property taxation for a period agreed to by a designating body (a county council or municipal fiscal body). It provides that before January 1, 2013, a designating body may adopt a resolution providing the exemption to a particular business. Enterprise information technology equipment is defined as: (1) hardware supporting computing, networking, or data storage function, including servers and routers; (2) networking systems having an industry designation as equipment within the "enterprise" or "data center" class of networking systems that support the computing, networking, or data storage functions; and (3) generators and other equipment used to ensure an uninterrupted power supply

to such hardware and networking systems. The bill provides that enterprise information technology equipment does not include computer hardware designed for single user, workstation, or departmental level use. Under provisions in this bill, an eligible business is defined as an entity that meets the following requirements: (1) the entity is engaged in a business that operates one or more facilities dedicated to computing, networking, or data storage activities; (2) the entity is located in a facility or data center in Indiana; (3) the entity invests in the aggregate at least \$10,000,000 in personal property and real property in Indiana after June 30, 2009; and (4) the average employee wage of the entity is at least 125% of the county average wage for each county in which the entity conducts business operations.

### **Specific Energy and Utility Related issues:**

#### **House Enrolled Act 1033 – Renewable Energy and Energy Savings Contracts**

This bill requires the state utility forecasting group (SUFU), in formulating suggestions concerning renewable energy resources for inclusion in its annual report, to evaluate potential renewable energy generation opportunities from biomass and algae production systems. It requires the department of agriculture, in its administration of economic development efforts for agriculture, to facilitate the use of biomass and algae production systems to generate renewable energy. Additionally, the measure provides that the maximum term of a guaranteed energy cost savings contract or utility efficiency program is 20 years, instead of the current maximum terms of 10 and 15 years, respectively. HEA 1033 amends the statute governing local public works projects to provide that a political subdivision or its agencies may: (1) participate in a utility efficiency program; (2) enter into a guaranteed savings contract; and (3) enter into a design-build contract instead of awarding a public works contract. The term "conservation measure" includes the installation of insulation in a political subdivi-

sion's facility. Under current law, installing insulation is a "conservation measure" only if the insulation is installed in a school facility.

### **House Enrolled Act 1278 – Water Utility Matters**

This measure deals with municipal authority for acquiring or condemning a water or sewer utility. SEA 1278 specifies the procedures by which a municipality may exercise the power of eminent domain to acquire the property of a public utility. It provides that a municipality: (1) may recover costs associated with acquiring utility property through reasonable rates and charges; and (2) may not impose additional rates or charges to pay for costs associated with acquiring the property by condemnation. The bill repeals provisions that: (1) permit a public utility to seek court review of the public convenience and necessity of the acquisition of the public utility's property by a municipality; and (2) require voter approval of the acquisition by purchase or condemnation of the property of a public utility. The legislative council is required to assign to a study committee the topic of water rights, drainage, and utilities.

### **House Enrolled Act 1554 – Energy Matters**

This bill allows the Indiana Office of Energy Development (IOED) to award grants to certain businesses and local government units that make qualified investments after June 30, 2009, to install and place into service in Indiana fueling stations that dispense alternative fuel (defined as liquefied petroleum gas, a compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product). No more than one grant may be awarded for a single location, and the amount of a grant awarded for a location may not exceed the lesser of: (1) the amount of the grant recipient's qualified investment for the location; or (2) \$20,000. The total amount of grants awarded for all state fiscal years may not exceed \$1,000,000.

HEA 1554 allows the IOED to award grants to certain local government units that make qualified purchases after June 30, 2009, of: (1) one or more alternative fuel vehicles;

or (2) one or more alternative fuel conversion kits. Not more than one grant may be awarded to any one unit and the amount of a grant that may be awarded to a unit is the sum of: (1) \$2,000 multiplied by the number of alternative fuel vehicles purchased; plus (2) for each alternative fuel conversion kit purchased, an amount equal to the lesser of \$2,000 or the actual cost of the conversion kit. The total amount of grants awarded for all units may not exceed \$1,000,000.

Another provision of HEA 1554 says that a state entity (which excludes a state educational institution) that purchases or leases a vehicle after December 31, 2009, must purchase or lease a clean energy vehicle unless the Department of Administration determines that the purchase or lease of a clean energy vehicle: (1) is inappropriate because of the purposes for which the vehicle will be used; or (2) would cost at least 10% more than the purchase or lease of a vehicle that is not a clean energy vehicle and is designed and equipped comparably to the clean energy vehicle. The Department of Administration will be required to adopt guidelines to provide a preference for the purchase or lease by state entities of clean energy vehicles manufactured wholly or partially in Indiana or containing parts manufactured in Indiana.

This bill also establishes the Office of Alternative Energy Incentives within the IOED to administer a program to provide incentives for rural electric membership corporations and their cooperatively owned power suppliers to develop alternative energy projects. It creates an alternative energy incentive fund – with no appropriation - to provide funds to corporations for use in developing alternative energy projects. IOED will administer the incentive fund and establish an account within that incentive fund for each corporation. The bill provides that two or more corporations that are members of the same cooperatively owned power supplier can develop alternative energy projects jointly. A corporation shall have access to federal economic stimulus funds: (1) for the same uses; and (2) in accordance with the same processes; as any other energy utility may have access to or use federal economic

stimulus money.

Finally, this bill amends the definition of “renewable energy resources” for purposes of utility generation and clean coal technology statutes to: (1) provide that energy from waste to energy facilities, to fall within the definition, is not limited to facilities producing steam not used for the production of electricity; and (2) include energy storage systems.

### **House Enrolled Act 1562 – High Speed Internet Service Initiative**

This bill requires the Indiana Economic Development Corporation to: (1) develop a high speed Internet service deployment and adoption initiative; and (2) create a statewide geographic information system of telecommunications and information technology services.

### **House Enrolled Act 1669 – Geothermal Conversion Loans and Energy Efficiency**

This bill establishes the geothermal conversion revolving fund for the purpose of making loans to school corporations that: (1) install a geothermal heating and cooling system in a new facility; or (2) install a geothermal heating and cooling system that replaces a conventional heating and cooling system. It provides that the revolving fund is administered by the Indiana Bond Bank. HEA 1669 requires the bond bank to establish a written procedure for providing loans from the revolving fund to school corporations and stipulates that a loan from the revolving fund may not exceed the difference between: (1) the cost of installing a geothermal heating and cooling system; and (2) the cost of installing a conventional heating and cooling system. A school corporation must enter into a loan agreement with the bond bank before receiving a loan from the revolving fund. Another provision in HEA 1669 provides that the maximum term of a guaranteed energy cost savings contract or utility efficiency program is 20 years, versus the current maximum term of 10 and 15 years. The bill amends the statute governing local public works projects to state that a political subdivision or its agencies may: (1) participate in a utility efficiency program or may enter into a guaranteed savings contract

as provided by law; and (2) enter into a design-build contract as permitted by law instead of awarding a public works contract. The bill defines a “conservation measure” as including installation of insulation in a political subdivision’s facility. Under current law, the definition of “conservation measure” includes only insulation of school facilities.

### **Senate Enrolled Act 21 – Theft of metal bill**

SEA 21 expands the definition of “valuable metal”, and removes the provision exempting valuable metal transactions under \$100 from reporting requirements. The bill specifies that the term “valuable metal” does not apply to a beverage can. A valuable metal dealer is required under the provisions in this bill to photograph the person from whom the dealer purchases valuable metal and the valuable metal being purchased and to record the source of the valuable metal. The State Police must notify valuable metal dealers of valuable metals that are particularly susceptible to theft. The bill defines “key facility” and makes trespassing a Class D felony if it is committed on a facility belonging to a key facility or public utility, including a municipally-owned utility. The bill raises theft and receiving stolen property to a Class C felony if the stolen property is a valuable metal taken from a key facility, public utility, railroad, or highway department and the absence of the metal creates a substantial risk of bodily injury to a person. Finally, the bill requires the law enforcement training board to adopt rules to provide, as part of the in-service training program for police officers, training concerning the theft of valuable metals and the regulation of valuable metal dealers.

### **Senate Enrolled Act 423 – Substitute Natural Gas Contracts**

This bill permits the Indiana Finance Authority to enter into contracts for the purchase and sale of substitute natural gas (SNG) from coal gasification facilities to regulated energy utilities for delivery to retail end use customers. It also requires the authority to establish the Substitute Natural Gas Account to provide funding for SNG related business.

## **Senate Enrolled Act 487 – Underground Plant Protection**

This bill establishes the underground plant protection advisory committee and authorizes the advisory committee to recommend penalties to the Indiana Utility Regulatory Commission (IURC) for persons that violate the underground plant protection statute. It establishes the underground plant protection account to receive deposits of civil penalties. Obsolete provisions requiring operators to record underground facility locations with county recorders are deleted from law. Beginning July 1, 2010, the IURC is required to report to the regulatory flexibility committee on best practices concerning vertical location of underground facilities. A person responsible for excavation or demolition must perform white lining if the person is unable to identify the physical location of the excavation or

demolition to the IUPPS. Under this bill, the IURC is required to adopt rules to implement the underground plant protection statute. Additionally, the operator of a pipeline facility that provides incorrect facility locate markings may be subject to a civil penalty under certain circumstances.

## **SR 76 – Climate Change**

SR 76 is a resolution to express the sense of the Indiana General Assembly regarding the need for the United States and the State of Indiana to address the problem of global climate change through the adoption of a fair and effective approach that safeguards American jobs and holds all countries accountable for the reduction of their individual greenhouse gas emissions.

You can find additional information at [www.in.gov/legislative](http://www.in.gov/legislative).

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](mailto:cwright@impa.com).