

Legislative

Update

May 6, 2011 • Volume 10, Issue 1

A publication of
Indiana Municipal Power Agency

Indiana Municipal Power Agency 2011 Indiana General Assembly Legislative Wrap-Up

The 2011 “long” session of the Indiana General Assembly ended somewhat quietly on Friday April 29th, despite what was a tumultuous session. The House of Representatives concluded a little before midnight and the Senate finished its business a bit earlier in the evening. Regardless of time, the legislature adjourned Sine Die having completed its work in regulation and without the need for a special session.

It is true that no two legislative sessions are the same. While the basics of the process are constant, every legislative session has its own unique flavor, influenced by the leaders and the political climate of the day. The 2011 session was no exception. This year will be known by the 5-week walkout by the House Democratic Caucus that shut the legislative process in the House of Representatives down from February 22nd until March 28th. The walk-out was the one tool that the House minority caucus had to alter the aggressive Republican legislative agenda, led by the overwhelmingly Republican majority caucuses in the House, Senate, and Governor Daniels. This was a budget-writing session, and the year that all legislative and Congressional districts were to be redrawn – probably the two most critical issues to be considered by the legislature. That political dynamic certainly played a key role in how the session ultimately unfolded over the last four months. It would seem that the good fortune of the GOP was most timely; however, even though both houses were controlled by the same party, they operated very differently. It was interesting to watch. Nonetheless, an aggressive agenda was pushed through and approved, which included numerous education reform measures, a corporate tax reduction, new legislative district maps, a measure that significantly altered the structure of project labor agreements in municipalities, a scaled back immigration reform measure, and finally a new two-year state budget that spends about \$28 billion, and keeps a \$1 billion surplus.

Other legislative efforts that have found their way to the Governor’s desk include measures that will prohibit texting while driving (HEA 1129), change local regulation of guns and firearms (SEA 292), and make changes to Indiana’s alcohol purchase identification requirements (SEA 78).

Chief among bills that did not pass this session include a measure to allow local municipalities to seek Chapter 9 bankruptcy when fiscally distressed, a statewide smoking ban, local government reform measures that would have prohibited nepotism and conflict of interest and that would have eliminated over 1,000 townships in the state. Additionally, no legislation affecting annexation was approved this year.

On the energy and electric utility front, this was an interesting, albeit relatively quiet, legislative session. The Indiana Municipal Power Agency tracked all legislation dealing with energy resources and the electric utility industry. We kept an eye on anything that had any impact on IMPA and municipal electrics in general. A great deal of energy policy is being shaped by what federal environmental regulatory agencies do or do not do in Washington DC, and as a result, many legislative proposals this session reflected that. In the end, there was really only one major energy bill that dominated discussions – SEA 251. The main components of SEA 251

are as follows: a cost recovery mechanism for federally mandated costs and a clear definition of what those costs can be, incentives for existing nuclear facilities undergoing maintenance required for relicensing, a voluntary renewable energy standard (does NOT apply to municipal electrics or rural cooperatives), and eminent domain authority to be used by private entities that seek to build a carbon dioxide pipeline in Indiana.

Legislation of General Interest

House Enrolled Act 1001 – State Budget

HEA 1001 spends approximately \$28 billion over the two years, contains no tax increases, and by the end of the biennium, it leaves about \$1 billion in reserves. The new budget contains several education provisions including provides additional funding for all-day kindergarten, as well as an increase for K-12 education. This legislature added a dramatic change in philosophy requiring that the dollars follow the student. There are many health care and human services related provisions, a freeze on legislator and judicial salaries, study committee assignments including a study of mass transit funding by the State Tax and Financing Policy Study Commission, various courts provisions, and several miscellaneous provisions. Of note, the new budget does include a provision that calls for an automatic taxpayer refund if the state's reserves exceed 10 % of budgeted spending. In such a case, taxpayers will receive an automatic refund of half of that extra money, while the other half would be used for the state's pension funds.

House Enrolled Act 1004 – Corporate Tax Reduction

HEA 1004 is the corporate tax reduction legislation. While there are numerous other provisions in this bill, the most prominent component is the reduction of the corporate

income tax rate from 8.5 to 6.5 percent. The bill phases these reductions in over four years beginning next year. The tax rate reduction was “paid for” by eliminating the tax exemption for non-Indiana state and municipal bond income on bonds purchased after December 31, 2011.

HEA 1005 – Industrial recovery tax credit

As passed, the language lowers the square foot threshold to 50,000 for three years and then increases the threshold to 100,000 square feet. In order to reach consensus among the conferees, this was the compromise. Also in conference committee, the usage was increased to 75% but the years in service remained reduced to 15 years. Finally the vacancy language remains reduced from two to one year.

House Enrolled Act 1007 – Tax Incentives

House Enrolled Act 1007 creates more authority for local governments to develop additional tax incentive packages using both property and income taxes. Specifically, HEA 1007 extends the period of time in which a county, city, or town may provide a tax exemption for enterprise information technology equipment until January 1, 2017. Current law permits the exemptions until January 1, 2013. The bill also permits a city, town, or county to enhance property tax abatement schedules to allow up to three years of 100% abatement if the business meets one of the following criteria: (1) locates in a large vacant building; (2) agrees to invest at least \$10 million in the community; (3) rehabilitates and occupies property in designated downtown areas; or (4) locates in a county with high unemployment. Authorizes local entities to develop alternative methods for determining the duration and amount of property tax abatements. It authorizes cities and counties to pay hiring incentives for new employment in their jurisdictions. The bill requires hiring incentives to be paid from local option income taxes

received by the city or county. The measure also provides that the hiring incentives may not exceed the local option income taxes paid by the new employees. The bill provides that a Public Safety Answering Point (PSAP) operated by an excluded city in Marion County does not count against the limit on the number of PSAPs in the county.

House Enrolled Act 1216 – Project Labor Agreements

HEA 1216 pertains to public works projects and project labor agreements. This was also one of the bills that was at the center of the 5-week House Democrat walk-out during the session. The bill revises the membership of the common construction wage committee, by replacing the Governor’s appointment with an appointment to be made by the Associated Builders & Contractors of Indiana. The bill phases in changes to the threshold of when the common construction wage must be applied to contracts. It raises the threshold from \$150,000 to \$250,000 for contracts awarded after December 31, 2011, and before January 1, 2013, and to \$350,000 for contracts awarded after December 31, 2012. The bill provides that a committee must consider any written reports with respect to wage scales submitted by the Indiana State Building and Construction Trades Council or the Associated Builders and Contractors of Indiana when making a determination of the common construction wage for a public works project. The bill contains a provision that urges the Legislative Council to assign the following topics to a study committee during the 2011 legislative interim: (1) use of an agreement with a labor organization on public works projects covered by a public works statute; and (2) job classifications used in a common construction wage determination.

House Enrolled Act 1129 – Texting While Driving

House Enrolled Act 1129 is legislation that prohibits texting while driving. Spe-

cifically, it makes it a Class C infraction if a person uses a telecommunications device to type, transmit, or read a text message or electronic mail message while operating a moving motor vehicle. It does allow a person to use hands free or voice operated technology to transmit a text message or electronic mail message to place or receive a telephone call while operating a moving motor vehicle, and permits a person to call 911 to report an emergency while operating a moving motor vehicle. It does not include: (1) amateur radio equipment operated by a person licensed by the Federal Communications Commission as an amateur radio operator; or (2) a communications system installed in a commercial motor vehicle weighing more than 10,000 pounds. HEA 1129 prohibits a police officer from confiscating a telecommunications device for the purpose of determining compliance or confiscating a telecommunications device and retaining it as evidence pending trial for a violation.

Senate Enrolled Act 292 – Regulation of Firearms

This legislation pertains to the regulation of guns and firearms in Indiana and does several things. The bill specifies that a political subdivision may not regulate: (A) firearms, ammunition, and firearm accessories; (B) the ownership, possession, carrying, transportation, registration, transfer, and storage of firearms, ammunition, and firearm accessories; and (C) commerce in and taxation of firearms, firearm ammunition, and firearm accessories. The bill also removes the following from current law: (A) references to “lawful discharge”; and (B) an exception concerning a city or town enacting or enforcing a provision prohibiting or restricting the lawful discharge of a firearm at a shooting range located within the boundaries of the city or town or a consolidated city from enacting or enforcing a provision prohibiting or restricting the lawful discharge of a firearm at a shooting range located within the territory of the consolidated city that comprised the

first class city before it became a consolidated city. SEA 292 specifies that a unit that prohibits or restricts the possession of a firearm in a building owned or administered by the unit by locating metal detection devices at each public entrance to the building must have at least one law enforcement officer at each public entrance who has been adequately trained to conduct inspections of persons entering the building and that local unit may not prohibit or restrict the possession of a handgun in the building by a person who has been issued a valid license to carry the handgun.

Senate Enrolled Act 411 -- Disclosure of Firearm or Ammunition Information in the Workplace

This legislation provides that a civil action may be brought against a public or private employer that has done the following: (1) required an applicant for employment or an employee to disclose information under certain circumstances about whether the applicant or employee owns, possesses, uses, or transports a firearm or ammunition; or (2) conditioned employment, or any rights, benefits, privileges, or opportunities offered by the employment, upon an agreement that the applicant for employment or the employee forgo the otherwise lawful ownership, possession, storage, transportation, or use of a firearm or ammunition. It also provides that a governmental entity may not restrict the possession of a firearm at a person's residence during a declared emergency.

Senate Enrolled Act 78 – Alcohol Identification Requirements

This legislation pertains to alcoholic beverage identification requirements. The bill makes it a Class B misdemeanor for an alcoholic beverage permittee or an employee or agent of the permittee to recklessly, knowingly, or intentionally sell, barter, exchange, provide, or furnish another person who is or reasonably appears to be less than 40 years of age an alcoholic beverage for consumption off

the licensed premises without first requiring the person to produce specified identification showing that the person is at least 21 years of age. Current law requires anyone purchasing alcoholic beverages to produce identification, regardless of age. The bill also urges the Legislative Council to assign to an existing study committee the topic of which state agency should have authority to control dangerous alcohol products. It provides that only the Alcohol and Tobacco Commission may conduct random unannounced inspections at locations where alcoholic beverages are sold or distributed to ensure compliance with certain alcoholic beverage laws. Under current law, an Indiana law enforcement agency, the county sheriffs, or an organized police department of a municipal corporation may also conduct random unannounced inspections. The legislation provides that the holder of a club permit for alcoholic beverages may designate as "guest day" or "guest days" three or fewer days in a month or nine or fewer consecutive days in a quarter. Current law allows a holder of a club permit to designate only one day each month as a "guest day".

Senate Enrolled Act 590 – Immigration

This legislation makes various changes concerning enforcement of federal immigration laws, illegal immigration, and related criminal matters. The bill does the following: 1) requires the Office of Management and Budget to calculate the costs of illegal aliens to Indiana and make a written request to Congress for reimbursement of those costs; 2) prohibits the adoption of a rule or policy that would limit employees communicating about citizenship or immigration status with other officials and agencies; 3) requires the issuance of a notice to law enforcement officers telling them to cooperate with the state or federal government in the enforcement of state or federal laws governing immigrants; 4) local unit becomes subject to suit by an Indiana resident and an injunction if a governmental body is

knowingly or intentionally limiting or restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law; 5) prohibits law enforcement officers from asking for verification of citizenship or immigration from federal immigration authorities if the contact with the person was only as a witness or victim of a crime or connected with the reporting of a crime; 6) requires a verification of the legal status of an individual over 18 years of age who is applying for a “local or public benefit” as that is defined in 8 U.S.C. 1621 for benefits that are provided by the political subdivision, and the maintenance of such verification for five years (but some exceptions were created for emergency health care service providers under certain conditions); 7) requires use of E-Verify when local government is hiring employees; 8) requires mandatory contract clauses, prescribed remedies for violations, affidavits and documentation to insure that contractors and subcontractors entering into or renewing a public contract for services after June 30, 2011 are using E-Verify and not knowingly hiring illegal immigrants, as well as for certain business grant recipients to use E-Verify; 9) requires that if bail is set by the judicial officer for a defendant who is a foreign national who is unlawfully present in the United States, bail must be a cash bond in an amount equal to the bail or a real estate bond in which the net equity in the real estate is at least two times the amount of the bail or a surety bond in the full amount of the bail that is written by a licensed and appointed agent of an insurer and certain provisions for the action if the defendant fails to appear; 10) creates new criminal offenses such as offenses related to consular identification; false identity statement; knowingly or intentionally transporting or moving an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law; and knowingly or intentionally concealing, harboring, or shielding from detection an alien in any place, including a building or means of transportation,

for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law with certain exemptions; (11) requires law enforcement officers to impound motor vehicles for violations of crimes related to moving, transporting, concealing, harboring, or shielding from detection aliens; and (12) allows a law enforcement officer to arrest a person if the officer has a certain removal order, detainer, or notice of action issued for the person or if the officer has probable cause to believe the person has been indicted for or convicted of one or more certain aggravated felonies.

Specific Energy and Utility Related Legislation

Senate Enrolled Act 251 – Clean Energy/Voluntary Renewable Standards/CO2 Pipelines

SEA 251 contains several provisions that are important to utilities. The bill defines a “compliance project” as a project undertaken by an energy utility (includes municipally owned utilities) to comply with certain federally mandated requirements. Under this legislation, an energy utility that seeks to recover federally mandated costs incurred in connection with a compliance project must apply to the Indiana Utility Regulatory Commission (IURC) for a certificate of public convenience and necessity. The bill sets forth certain factors that the IURC must consider in determining whether to approve a certificate. It specifies that if the IURC approves a proposed compliance project and the projected federally mandated costs associated with it, the following will apply: (1) 80% of the approved costs shall be recovered by the energy utility through a tracker; (2) 20% of the approved costs shall be deferred and recovered by the energy utility as part of the next general rate case filed by the utility

with the IURC; and (3) actual costs exceeding the projected federally mandated costs of the approved compliance project by more than 25% shall require specific justification and approval before being authorized in the energy utility's next general rate case. Regarding nuclear energy, SEA 251 allows an existing nuclear energy facility to qualify for certain financial incentives available for clean energy projects if the facility: (1) supplies electricity to Indiana retail customers on July 1, 2011; and (2) is undergoing a comprehensive life cycle management project to enhance the safety and reliability of the facility while it is licensed to operate by the United States Nuclear Regulatory Commission. This legislation also establishes an incentive based voluntary clean energy portfolio standard program for investor-owned electric utilities (this does NOT apply to municipally-owned electric utilities or rural cooperatives). It amends the definition of "renewable energy resources" that would qualify for this program. The bill requires the IURC, before approving an application for participation in the program, to determine that participation in the clean energy standard program will not result in an increase to the electric utility's retail rates and charges above what could reasonably be expected if the application were not approved. This bill provides that in determining whether an electricity supplier has met a CPS goal, the IURC shall require that least 50% of the clean energy obtained by the electricity supplier to meet the energy requirements of its Indiana retail customers must originate from clean energy resources located in Indiana. The goal is 10% by 2025. Finally, SEA 251 allows private entities the opportunity to apply for eminent domain authority to obtain an easement or right of way for the construction of a pipeline to transport carbon dioxide (CO₂). It provides that a carbon dioxide transmission pipeline company that exercises the power of eminent domain must: (1) compensate the property owner by making a payment to the owner equal to: (A) 125% of the fair market value of the interest acquired, if the interest involves agricultural land; or (B) 150% of the

fair market value of the interest acquired, if interest involves a residence; and (2) pay to the property owner: (A) any damages determined under the statute governing eminent domain; and (B) any loss incurred in a trade or business; that are attributable to the exercise of eminent domain. It allows a carbon dioxide transmission pipeline company 180 days after the pipeline is completed to provide information to the department about the actual route of the pipeline. It also provides that the provisions concerning carbon dioxide transmission pipelines expire July 1, 2021.

Senate Enrolled Act 66 -- Utility matters

SEA 66 provides an expanded definition of renewable energy resources for the purposes of the Indiana statute that provides financial incentives for clean coal and energy projects. The bill adds (1) low temperature, oxygen starved gasification of municipal solid waste; (2) methane recovered from landfills for the production of electricity; and (3) coal bed methane derived from a naturally occurring biogenic process.

House Enrolled Act 1128 -- Renewable Energy Resources

HEA 1128 provides that the following qualify as renewable energy resources for purposes of the statute that provides financial incentives for clean coal and energy projects. The bill adds (1) certain resources that qualify as clean energy resources for purposes of the statute governing the voluntary clean energy portfolio standard program; (2) low temperature, oxygen starved gasification of municipal solid waste; and (3) methane recovered from landfills for the production of electricity.

House Enrolled Act 1291 -- Storm Water Management

HEA 1291 provides that a municipality is not liable for the investigation, assessment, or opinion offered by the city board of works,

town council, or designee in connection to storm water nuisances. The bill establishes an alternative dispute process for dealing with storm water nuisance complaints. It also provides that the person seeking the removal of a storm water nuisance may file a request with a designated unit of government to investigate and make an assessment of the alleged problem. HEA 1291 allows a local unit to adopt an ordinance to charge a fee to recover the costs associated with the process. It requires the unit of government designee to provide an oral or written report pertaining to the assessment and alternative dispute resolution information. The bill provides that an artificial conveyance or runoff operating in compliance with a permit issued by a political subdivision is not subject to the provisions related to the alternative dispute process dealing with storm water nuisance complaints. A person who lays out commercial, industrial, or other land developments outside the corporate boundaries of a municipality must submit drainage plans and specifications to a county drainage board. That “development”, for purposes of a drainage plan submitted to a county

drainage board, does not include public or municipally owned utility infrastructure.

Senate Enrolled Act 71 -- Coal Bed Methane and other Oil and Gas Issues

SEA 71 allows for the regulation by the Department of Natural Resources of most

aspects of oil and gas and other petroleum operations, including the regulation of coal bed methane wells. It provides that oil and gas statutes do not apply to methane ventilation governed under an approved federal Mine Safety and Health Administration coal mine ventilation plan. SEA 71 requires the Indiana Natural Resources Commission to regulate various aspects of coal bed methane wells and requires well permit applicants to disclose products to be used in the stimulation process of coal seams.

House Enrolled Act 1131 - Video Service Franchise Fees

HEA 1131 directs the Regulatory Flexibility Study Committee to consider and make any recommendations about the following no later than November 1, 2011: (1) Whether video service franchise fees paid to local units are used by local units for purposes related to the provision of video service in the units and in a manner consistent with the statute concerning video service franchises.; and (2) Whether video service franchise fees have an anti-competitive effect on the pricing and provision of video service in Indiana.

The IMPA Legislative Update is published by the
Indiana Municipal Power Agency.

For questions regarding legislative activities, or if you would like additional information on any of the bills mentioned in this report, please contact Carolyn Wright, Vice President of Government and Member Services for IMPA, at (317) 575-3873 or cwright@impa.com.