

FAEGRE BAKER DANIELS

2018 Indiana Legislative Update #9

BOMA Indianapolis



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State lawmakers are facing a short but hectic week at the Statehouse as the clock winds down on the 2018 legislative session. By law, the General Assembly must adjourn no later than Wednesday, March 14, which leaves only three days for the House and Senate to reach agreement on the nearly 60 bills that are in conference committee.

As the final deadline approaches, five bills on the tracking list are in conference committees as members work to hammer out differences between the House and Senate versions of the bills. These include [HB 1104](#) (property tax matters), [SB 242](#) (various tax issues), [HB 1015](#) (unlawful indemnity agreements) and two workforce development bills, [HB 1002](#) and [SB 50](#).

One bill has been signed by the governor: [HB 1050](#) (small cell wireless structures). Two other bills have passed both houses in their final form and are awaiting the governor's pen: [SB 393](#) (safety notice of advanced structural buildings) and [HB 1278](#) (economic improvement districts).

Finally, two bills on the tracking list are lingering in legislative limbo because they were amended in the second chamber but their respective authors have yet to file either a concurrence to send the bill to governor "as is," or a dissent to send the bill to conference committee: [HB 1288](#) (economic development) and [SB 386](#) (financing of flood control improvements).

Following is an updated tracking list of bills that are still alive. As always, please let us know if you have any questions or need additional information.

TAX & FINANCIAL ISSUES

HB 1104 PROPERTY TAX MATTERS (LEONARD D) Among other things:

- *Landlocked Property:* Provides that if an assessing official determines that the owner of a parcel of property is unable to use the property to the owner's full and complete benefit because: (1) the parcel is completely surrounded by parcels owned by other owners; and (2) the owner does not possess and cannot obtain an easement granting ingress or egress into the property or the owner is otherwise incapable of having sufficient ingress or egress to the property; the assessing official shall apply an influence factor for limited access as prescribed in the rules of the DLGF.
- *Rule Adoption:* Specifies: (1) that rules adopted by the DLGF for the appraisal of real property may not apply to any appraisal contemporaneously being conducted under a county's reassessment plan; and (2) that rules adopted by the DLGF may first apply to the reassessment phase beginning in the following calendar year under a county's reassessment plan.
- *Application of Deductions:* Specifies that for purposes of attributing the amount of a property tax deduction or exemption to the gross assessed value of a property: (1) a deduction or exemption that is specific to an improvement shall be applied only to the assessed value allocation pertaining to that improvement; and (2) to the extent that a deduction or exemption is not specific to an improvement; the deduction or exemption shall be applied in the order that will maximize the benefit of the deduction or exemption to the taxpayer.
- *Project Financing:* Provides that a redevelopment commission may issue bonds or enter into leases with a term of up to 35 years to finance a project that includes, as part of the project, the use and repurposing of two or more buildings and structures that are: (1) at least 75 years old; and (2) located at a site at which manufacturing previously occurred over a period of at least 75 years. Specifies that in the case of an allocation area, for such a project, the expiration date of the allocation provision may not be more than 35 years after the date on which the allocation provision is established.
- *TIF:* Specifies that the base assessed value for tax increment financing purposes includes the net residential assessed value within the allocation area, as finally determined for the current assessment date.
- *Annexation:* Voids an annexation remonstrance waiver executed on or before July 1, 2003. Voids a waiver executed after June 30, 2003, and before July 1, 2018, unless the waiver was recorded in the county where the property is located before January 1, 2019. Voids a waiver executed after June 30, 2018, unless the waiver was recorded in the county where the property is located within 30 business days after the date the waiver was executed. Provides that a waiver executed after June 30, 2003, that was properly recorded expires 15 years after the date the waiver was executed. Provides that waivers voided under the bill do not invalidate annexations that were effective before July 1, 2018.
- *Study committee:* Asks the Legislative Council to assign certain topics to a study committee, including the issue of whether property taxes imposed due to a referendum should be eligible for local income tax property tax relief credits.

Current Status: IN CONFERENCE COMMITTEE

State Bill Page: [HB 1104](#)

HB 1278 **ECONOMIC IMPROVEMENT DISTRICTS** (EBERHART S) Among other things:

- Increases the required percentage number of signatures needed on a petition from owners of real property within a proposed district.
- Specifies that the signature of a person whose property is: (1) owned by this state, or a state agency, or leased to a state agency and is exempt from property taxation; or (2) owned by a political subdivision of this state and is exempt from property taxation; may not be considered in determining whether the required number of signatures needed on a petition are met.
- Provides that the assessed valuation of property that is: (1) owned by this state, or a state agency, or leased to a state agency and is exempt from property taxation; or (2) owned by a political subdivision of this state and is exempt from property taxation; may not be considered in determining the total assessed valuation in the proposed district.
- Repeals the provision that allows the proposals contained in the petition to be amended or modified in the ordinance adopted to establish the district.
- Eliminates the provision that allows the board of a district to increase a special assessment following a hearing on an owner's protest of the special assessment. Requires the board to either confirm or decrease the special assessment in its determination of the owner's protest.
- Provides that the legislative body of a unit may not pass an amending ordinance to increase the boundaries of a district. Requires the district (or the person that files the petition, if the proposed district is rejected) to, at the request of the unit, reimburse the unit for the reasonable expenses incurred by the unit to comply with the statutory requirements for the district. Provides that the legislative body may choose not to collect all or part of the reasonable expenses.

Current Status: SENT TO GOVERNOR

State Bill Page: [HB 1278](#)

HB 1288 **ECONOMIC DEVELOPMENT** (TORR J) Among other things:

- Provides for the expiration of provisions in the enterprise zone statute relating to the functions of the IEDC, and authorizes similar functions to be performed by: (1) the urban enterprise association (U.E.A.) in the enterprise zone; and (2) the fiscal body of the municipality in which the enterprise zone is located.
- Retains provisions in current law that require each zone business that receives an incentive to assist the U.E.A. in the enterprise zone in an amount determined by the legislative body of the municipality in which the zone business is located. Provides that the legislative body may pass an ordinance disqualifying a zone business from eligibility for incentives if the zone business does not assist the U.E.A. Provides that the legislative body may, in certain circumstances, impose an additional fee that is equal to 1% of all the zone business's incentives.
- Authorizes the U.E.A. in an enterprise zone to do the following: (1) Adopt guidelines for the disqualification of a zone business. (2) Modify the boundaries of the enterprise zone.

- Provides that the board of the IEDC may not renew an enterprise zone during a phase out period after June 30, 2018. Provides that an enterprise zone that was not renewed under those provisions between January 1, 2017, and June 30, 2018, may be renewed for an additional five year period if the fiscal body of the municipality adopts a resolution to renew the enterprise zone for an additional five year period.

Current Status: PENDING CONCURRENCE OR DISSENT

State Bill Page: [HB 1288](#)

SB 242 TAX ISSUES (HOLDMAN T) Among other things:

- Makes various changes to the state income tax laws, including conformance with the latest version of the Internal Revenue Code, the net operating loss carryover period, the earned income tax credit, the calculation of income tax rates when two different rates are in effect during the taxpayer's taxable year, tax due dates, refund claims, and income tax preparer requirements.
- Provides that the reduced tax rate for a corporation in a qualified military enhancement area (area) applies only to a corporation that locates all or part of its operations in an area before January 1, 2019.
- Provides that a county fiscal body may adopt an ordinance to impose (within the local income tax expenditure rate) a tax rate for correctional facilities and rehabilitation facilities in the county.

Current Status: IN CONFERENCE COMMITTEE

State Bill Page: [SB 242](#)

SB 386 FINANCING OF FLOOD CONTROL IMPROVEMENTS (RUCKELSHAUS J)

- Authorizes certain redevelopment commissions (commissions), following a written recommendation from the board of public works and approval of the legislative body, to adopt an ordinance designating an area as a flood control improvement district (district) to capture incremental property tax revenue within the district to be used for the construction, replacement, repair, maintenance, or improvement of flood control works.
- Provides that only special flood hazard property may be included within the boundaries of a district. Defines "special flood hazard property" as property that on January 1, 2018, is situated in a special flood hazard area as designated by the Federal Emergency Management Agency.
- Provides that, before making a recommendation to the commission to establish a district, a board of public works must: (1) establish the boundaries for the district; (2) identify the owners of each parcel of property in the district; (3) create a proposed plan for flood control works within the district; and (4) hold a public hearing on the proposed district.
- Provides that a district may not include any property that is already included in a tax increment financing allocation area.
- Provides that the fiscal officer of a unit shall establish a flood control

improvement fund (fund) for each district that is established within the jurisdiction of the unit. Provides that the incremental property tax revenue from a district shall be deposited in the fund and used only for providing flood control works within the boundaries of that district. Provides that the commission may issue bonds payable from the fund for the purpose of construction, replacement, repair, maintenance, or improvement of flood control works.

- Allows a unit to adopt an ordinance to continue distribution and allocation of property taxes after bond maturity, solely for the purpose of maintenance and repair of flood control works within the district. Allows a unit to adopt an ordinance to continue distribution and allocation of property taxes after bond maturity, solely for the purpose of maintenance and repair of flood control works within the district for not more than 50 years.

Current Status: PENDING CONCURRENCE OR DISSENT

State Bill Page: [SB 386](#)

ENERGY & THE ENVIRONMENT

HB 1050 **SMALL CELL WIRELESS STRUCTURES** (OBER D) Specifies that the statute concerning permits for wireless facilities and wireless support structures applies to permits issued by a permit authority to a communications service provider. Provides that a resolution, ordinance, or other regulation: (1) adopted by a permit authority after April 14, 2017, and before May 2, 2017; and (2) that designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities; applies only to communications service providers and those geographic areas that are zoned residential and where all existing utility infrastructure is already buried. Provides that, with respect to the construction, placement, or use of small cell facilities and associated supporting structures, a permit authority may prohibit the placement of a utility pole or a new wireless structure in a right-of-way within an area that is designated strictly for underground or buried utilities if, among other requirements, the area was zoned for residential use before May 1, 2017.

Current Status: **SIGNED BY GOVERNOR**

State Bill Page: [HB 1050](#)

CODES & STANDARDS

SB 393 **SAFETY NOTICE OF ADVANCED STRUCTURAL BUILDINGS** (ECKERTY D) Requires an individual applying for a building permit issued by a city, town, or county for a Class 1 or Class 2 structure after June 30, 2018, to disclose the use of advanced structural components on the building permit application. Requires the city, town, or county building commissioner to notify the local fire department and local 911 call center of a Class 1 or Class 2 structure's use of advanced structural components not later than 90 days after issuing a building permit. Directs a 911 telephone call center to maintain and relay information contained in a qualifying property's notification and received by the 911 telephone call center. Prohibits the fire prevention and building safety commission (commission) or a state agency from adopting rules requiring the installation of an automatic fire sprinkler system. Prohibits a political subdivision from adopting an

ordinance or other regulation requiring the installation of an automatic fire sprinkler system. Requires that the commission adopt rules to replace the current statewide residential code before January 1, 2020. Provides that if the commission uses a national code as part of the adoption of the statewide residential code, the commission shall amend the national code as a condition of the adoption of the code. Requires the commission to submit a report to the general assembly by January 1, 2019 regarding the commission's work related to the adoption of a replacement statewide residential code.

Current Status: SENT TO GOVERNOR

State Bill Page: [SB 393](#)

MISCELLANEOUS

SB 50 **WORKFORCE DEVELOPMENT; CAREER AND TECHNICAL EDUCATION (LONG D)**

- Establishes the college and career funding review committee. Requires the review committee to study certain issues and to submit a report to the governor and the Legislative Council.
- Establishes the governor's workforce cabinet to develop, not later than July 1, 2018, a comprehensive career navigation and coaching system for Indiana.
- Requires high schools maintained by a school corporation, a charter school, or an accredited nonpublic school to participate in the career coaching program.
- Requires at least 25% of the money appropriated by the general assembly for adult education or the work Indiana program to be used: (1) to reimburse an eligible provider for adult education that is provided to eligible employees who need education in basic skills or that is necessary for an eligible employee to receive a high school diploma or an Indiana high school equivalency diploma; or (2) for adult education grants to employers. Specifies criteria that an individual must meet to be an eligible employee.
- Establishes the Next Level jobs employer training grant program and specifies criteria to receive a grant. Provides limits on the grant amount per employee and per employer.
- Requires the Legislative Services Agency to conduct a review, analysis, and evaluation of the twenty-first century scholars program and the Frank O'Bannon grant program and submit a report to the governor and the Legislative Council.
- Urges the Legislative Council to assign to an appropriate interim study committee the question of whether the state should submit a combined state plan instead of a unified state plan to the United States Department of Labor when the state submits a new Workforce Innovation and Opportunity Act plan.

Current Status: IN CONFERENCE COMMITTEE

State Bill Page: [SB 50](#)

HB 1002 **REORGANIZATION OF WORKFORCE FUNDING AND PROGRAMS (HUSTON**

T) Among other things:

- Requires an annual workforce related program review by the Legislative Services

Agency.

- Provides that the governor shall appoint a secretary of workforce training.
- Establishes the governor's workforce cabinet to develop, not later than July 1, 2018, a comprehensive career navigation and coaching system for Indiana and requires all high schools to participate in the career coaching program.
- Requires workforce and education information as part of the biennial budget report that is submitted to the governor and budget committee for preparation of the governor's proposed budget bill.
- Repeals the training 2000 program and fund effective July 1, 2019, and provides for the program phase out.
- Provides that an emancipated student or the parent of a student enrolled in a career or technical course may voluntarily release information, on a form prescribed by DOE, pertaining to the student's enrollment in the career and technical education course to potential employers that contact the school to recruit students with particular career and technical skills.
- Requires the State Board of Education, when establishing an apprenticeship as a graduation pathway requirement, to establish as an apprenticeship program only an apprenticeship program registered under the federal National Apprenticeship Act or another federal apprenticeship program administered by the United States Department of Labor.
- Revises eligibility criteria for applicants for high value workforce ready credit-bearing grants, and provides that if the demand for high value workforce ready credit-bearing grants exceeds the appropriation, the Commission for Higher Education shall prioritize applicants who are classified as independent.
- Specifies that an individual who is enrolled as a part-time postsecondary student, regardless of whether a part-time student is qualified to receive an adult student grant, may participate in the employment aid readiness network (EARN) Indiana program.
- Transforms Ivy Tech Community College's regional boards of trustees to campus boards of trustees.
- Establishes the Next Level jobs employer training grant program.
- Urges the Legislative Council to assign to a study committee the task of studying statutory and administrative barriers that may create disincentives that keep employers from establishing employer provided child care for their employees.
- Requires FSSA and INDOT to perform a coordinated study on leveraging money for transportation to workforce related programs.

Current Status: IN CONFERENCE COMMITTEE

State Bill Page: [HB 1002](#)

HB 1015

UNLAWFUL INDEMNITY AGREEMENTS (TORR J) Provides that the law concerning indemnity agreements in construction or design contracts applies to certain design-build contracts. Specifies that "sole negligence" for purposes of liability under a construction or design contract does not include: (1) vicarious liability; (2) imputed negligence; or (3) assumption of a nondelegable duty. Urges the legislative council to assign to the appropriate study committee the issue of whether a provision in a professional services

contract that requires indemnification or defense of a promisee for certain liability is against public policy.

Current Status: IN CONFERENCE COMMITTEE

State Bill Page: [HB 1015](#)