

FAEGRE BAKER DANIELS

2019 Indiana Legislative Update #2

BOMA Indianapolis



February 3, 2019

State lawmakers have now closed out the first month of the 2019 “long” session. Despite record cold temperatures that shut down many schools and businesses, the Statehouse remained open last week as lawmakers engaged in heated debates on topics running the gamut from virtual education to hospital construction.

Last week, House and Senate committees approved and amended several bills on the tracking list including:

- **House Bill 1113**, which requires the Fire Prevention and Building Safety Commission to adopt rules requiring that a person performing new construction or any major alteration of an existing public address system in a Class 1 structure located in a first or second class city after June 30, 2020, must consider the installation of an audio frequency induction loop systems (AFIL); and
- **House Bill 1128**, which prohibits a local unit from requiring, as a condition precedent to granting, issuing, or approving certain permits for any Class 1 or Class 2 structures, completion of work upon which the performance bond or other surety was obtained prior to recording the secondary plat.

Several bills of potential interest to BOMA have passed their house of origin and are now eligible for consideration in the second chamber, including:

- **Senate Bill 83**, which would bill allow a redevelopment commission (including the Indianapolis MDC) to use up to 15% of TIF revenues for ongoing maintenance and repair of public ways, sewers, central water systems, central sewer systems, roads, sidewalks, and levees located in the TIF district; and
- **Senate Bill 233**, which would increase from \$20,000 to \$40,000, the acquisition cost threshold for the business personal property tax exemption, resulting in the exemption of approximately 28,300 additional business property tax returns.

Committee activity is expected to ramp up next week as the legislature heads into the final two weeks of committee hearings on bills in their house of origin.

Following are summaries of bills of potential interest to BOMA that have received legislative action or are likely to be scheduled for a hearing. The bill summaries are broken down into 4 categories: **Tax & Financial Issues, Energy & the Environment, Codes & Standards, and Miscellaneous**. If you’d like to see the most recent version of a bill, just click on the link titled “State bill page.”

TAX & FINANCIAL ISSUES

- HB 1177 TOWNSHIP GOVERNMENT ISSUES (ZIEMKE C)** Among other things: Requires a township to prepare a capital improvement plan for the ensuing three years if the balance in certain capital improvement funds in the preceding year exceeds 150% of the township's annual budget estimate. Prohibits the township from collecting property taxes for certain capital improvement funds in the ensuing year unless the township has adopted a capital improvement plan.
- Current Status:* 1/31/2019 - Referred to the Committee on Ways and Means pursuant to House Rule 127
- All Bill Status:* 1/31/2019 - Committee Report amend do pass, adopted
1/30/2019 - House Committee recommends passage, as amended Yeas: 9; Nays: 3
- State Bill Page:* [HB 1177](#)
- HB 1477 PROPERTY TAX REFERENDUM FOR LOCAL OPERATING FUND (HUSTON T)** Permits counties, cities, and towns to adopt a resolution to hold a referendum to impose a property tax levy for a referendum tax levy operating fund.
- Current Status:* 1/15/2019 - Referred to House Ways and Means
- All Bill Status:* 1/15/2019 - First Reading
1/15/2019 - Authored By Todd Huston
- State Bill Page:* [HB 1477](#)
- SB 7 MARION COUNTY CAPITAL IMPROVEMENT BOARD (MISHLER R)** Allows the expansion of the professional sports development area (tax area) in Marion County. Changes the maximum amount of state revenue that may be captured in the tax area after July 1, 2021. Authorizes the city-county council to adopt a resolution that continues imposition of the increase to the county supplemental auto rental excise tax through February 28, 2038. Authorizes the city-county council to adopt a resolution that continues imposition of the increase to the county admissions tax through February 28, 2038. Authorizes the city-county council to adopt a resolution that continues the capture of local income taxes attributable to the tax area until December 31, 2040. Allows the treasurer of state to enter into an agreement with the capital improvement board (CIB) in Marion County under which estimated excess revenues may be distributed to the CIB as a loan that must be repaid with interest no later than June 30, 2038.
- Current Status:* 1/15/2019 - Referred to Senate Appropriations
- All Bill Status:* 1/15/2019 - First Reading
1/15/2019 - Authored By Ryan Mishler
- State Bill Page:* [SB 7](#)
- SB 83 TAX INCREMENT FINANCING (MELTON E)** Allows a redevelopment commission (including the Indianapolis metropolitan development commission) to the use up to 15% of the property tax proceeds allocated to a redevelopment district in a fiscal year for ongoing maintenance and repair of: (1) public ways; and (2) sewers, central water systems, central sewer systems, roads, sidewalks, and levees; that are located in an allocation area and that were funded in whole or in part with tax proceeds allocated to the redevelopment district.
- Current Status:* 1/29/2019 - Referred to House
- All Bill Status:* 1/28/2019 - added as coauthor Senator Kruse
1/28/2019 - added as coauthor Senator Randolph
1/28/2019 - House sponsor: Representative Beck
1/28/2019 - Third reading passed; Roll Call 35: yeas 35, nays 13
- State Bill Page:* [SB 83](#)
- SB 233 BUSINESS PERSONAL PROPERTY TAX EXEMPTION (FREEMAN A)**
- Increases, from \$20,000 to \$40,000, the acquisition cost threshold for the business personal property tax exemption. Specifies that a taxpayer who is eligible for a personal property tax

exemption must include on the taxpayer's personal property tax return: (1) information concerning whether the taxpayer's business personal property within the county is in one location or multiple locations; and (2) an address for the location of the property.

- Repeals provisions in current law that allow a county council to impose a local service fee on each person that has exempt business personal property because the business personal property does not exceed the acquisition threshold.

Current Status: 1/29/2019 - Referred to House

All Bill Status: 1/28/2019 - Third reading passed; Roll Call 38: yeas 48, nays 0

State Bill Page: [SB 233](#)

SB 255 CULTURAL DISTRICT DEVELOPMENT (FORD J) Provides that an arts and cultural district certified by the Indiana arts commission is subject to annual review by the commission and must be recertified every four years. Specifies certain requirements for certification (or recertification) of a district.

Current Status: 2/4/2019 - Senate Bills on Third Reading

State Bill Page: [SB 255](#)

SB 535 EXTRATERRITORIAL POWERS OF CITIES AND TOWNS (BOOTS P) Among other things:

- Repeals the general authority of a city or town (municipality) to exercise the following powers outside of its corporate boundaries: (1) Regulating conduct or property use endangering public health, safety, and welfare. (2) Capturing and destroying animals and maintaining and operating animal shelters. (3) Operating recreational parks and exercising eminent domain to acquire property for park purposes.
- Provides that a municipality may only exercise eminent domain within the municipality unless a statute expressly provides otherwise. Allows a municipality to continue to exercise eminent domain to acquire property outside its boundaries, if it has reached a specified point in the eminent domain proceedings on January 1, 2019.
- Eliminates the ability of a municipal advisory plan commission to exercise planning and zoning jurisdiction, including approval or denial of applications for improvement permits and other permits for property located in the unincorporated area on July 1, 2019, except with regard to approving or denying: (1) pending petitions and applications; or (2) appeals of petitions or applications; filed before July 1, 2019. Provides that a pending petition or application that is not approved or denied by the municipality before July 1, 2020, is considered approved. Provides that a petition or application is considered approved if an appeal of the municipality's determination of the petition or application is pending on July 1, 2020. Allows a petitioner to withdraw a petition filed with the municipality before July 1, 2019, and file a new petition with the appropriate county department, if any, if the petition has not been approved or denied by the municipality.

Current Status: 2/7/2019 - Senate Local Government, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 125

All Bill Status: 1/31/2019 - Senate Local Government, (Bill Scheduled for Hearing); **Time & Location:** 9:00 AM, Rm. 130

State Bill Page: [SB 535](#)

SB 563 ECONOMIC DEVELOPMENT (HOLDMAN T) Among other things:

- Amends the definition of "sales" and adds a definition of "telecommunication services" and "broadcast services" under the state adjusted gross income tax provisions. Amends the provisions for determining when sales, other than sales of tangible personal property, are derived from sources within Indiana for purposes of determining the state adjusted gross income of corporations and nonresident persons. Authorizes the Indiana department of state revenue (department) to adopt rules that apply retroactively to January 1, 2019, to specify where sales, receipts, income, transactions, or costs are attributable.
- Provides that a taxpayer (with certain exceptions) is not entitled to receive an industrial

recovery tax credit for a qualified investment made after December 31, 2019.

- Allows a taxpayer to assign all or part of a venture capital investment tax credit, subject to certain limitations.
- Amends the definition of "qualified investment" under the Hoosier business investment tax credit to include the purchase of retooled or refurbished machinery and certain energy conservation and pollution control equipment.
- Amends the headquarters relocation tax credit to extend the credit to an eligible business that: (1) acquired at least \$4,000,000 in venture capital within either six months prior to or six months after applying for the credit; and (2) commits to: (A) relocating its headquarters to Indiana; or (B) relocating the number of jobs that equal 80% of the business's payroll to Indiana. Provides that the following apply to an eligible business that qualifies for a headquarters relocation tax credit under the new provision: (1) The total amount of credits that may be approved by the IEDC for all of those eligible businesses in a calendar year is subject to an annual cap established by the budget agency. (2) The credit is refundable at the discretion of the IEDC.
- Establishes the redevelopment tax credit (credit). Requires a taxpayer to apply to the IEDC for the credit. Provides that a taxpayer may claim a credit against state tax liability if: (1) the taxpayer makes a qualified investment for the redevelopment or rehabilitation of real property located within a qualified redevelopment site; and (2) the qualified investment is approved by the IEDC. Provides that the amount of the credit is equal to: (1) the qualified investment made by the taxpayer and approved by the IEDC in an agreement; multiplied by (2) the applicable credit percentage determined by the IEDC. Specifies the maximum applicable credit percentages that apply to qualified investments. Allows a taxpayer to carry forward any unused credit amounts for nine taxable years following the unused credit year. Allows a taxpayer to assign all or part of a redevelopment tax credit, subject to certain limitations. Provides that the IEDC shall require a taxpayer to enter into an agreement with the IEDC as a condition of receiving a credit. Authorizes the IEDC to include in an agreement provisions that: (1) require the taxpayer to repay all or part of a credit awarded over a period of years; and (2) limit the maximum amount of the taxpayer's credit that may be claimed during a taxable year. Provides that an agreement must include a repayment provision for the amount of any credit award that exceeds \$5,000,000. Allows a pass through entity to allocate a redevelopment tax credit among its shareholders, partners, beneficiaries, or members of the pass through entity as provided by written agreement. Requires the IEDC to establish measurements for evaluating the performance of the redevelopment tax credit and evaluate the tax credit program on a biennial basis.

Current Status: 1/14/2019 - Referred to Senate Tax and Fiscal Policy

All Bill Status: 1/14/2019 - First Reading

1/14/2019 - Authored By Travis Holdman

State Bill Page: [SB 563](#)

SB 601 REGIONAL DEVELOPMENT TAX CREDIT (MISHLER R)

- Establishes the regional development tax credit (credit). Allows a taxpayer to apply to the Indiana economic development corporation (IEDC) for the credit. Provides that a taxpayer is entitled to a credit against state tax liability if: (1) the taxpayer makes a qualified investment for the redevelopment or rehabilitation of real property that is vacant or underused; (2) the qualified investment is part of a project that is located within the area of a regional development authority and is included in the regional development authority's regional redevelopment plan; and (3) the qualified investment is approved by the IEDC. Specifies the factors that the IEDC shall consider in evaluating a taxpayer's application for a proposed qualified investment. Provides that the amount of the credit is equal to: (1) the qualified investment made by the taxpayer and approved by the IEDC in an agreement; multiplied by (2) the applicable credit percentage determined by the IEDC. Allows a taxpayer to carry forward any unused credit amounts for nine taxable years following the unused credit year. Provides that the aggregate amount of the credits awarded in a state fiscal year may not exceed

\$50,000,000.

- Provides that the aggregate amount of EDGE credit awards in a state fiscal year for projects to create new jobs in Indiana may not exceed \$100,000,000.
- Provides that a taxpayer is not entitled to receive any of the following (with certain exceptions):
 - (1) An industrial recovery tax credit for a qualified investment made after December 31, 2019.
 - (2) A community revitalization enhancement district tax credit for a qualified investment made after December 31, 2019. Makes conforming changes.

Current Status: 1/15/2019 - Referred to Senate Tax and Fiscal Policy

All Bill Status: 1/15/2019 - First Reading
1/15/2019 - Authored By Ryan Mishler

State Bill Page: [SB 601](#)

SB 623 PROPERTY TAX MATTERS (BUCHANAN B)

- Provides that a county assessor or township assessor (if any) may request the department of local government finance (department) to perform a state conducted assessment of a particular commercial building or structure used for retail purposes. Specifies the procedures for the state conducted assessment.
- Requires assessing officials to apply a cost approach to assessments of commercial real property used for retail purposes if the property is occupied by the original owner or by a tenant for which the improvement was built.
- Provides that, when using a sales comparison approach in assessments of a commercial building or structure used for retail purposes, assessing officials may not use second generation property as a comparable sale property for purposes of a sales comparison analysis of a first generation property or in establishing obsolescence.
- Defines "first generation property" as a building or structure designed to be functionally and economically efficient for use for retail purposes by the original tenant, or a similar class of tenants, over a period of time during which the building or structure retains its original utility and desirability.
- Defines "second generation property" as a building or structure whose design for use for retail purposes by the original tenant, or similar class of tenants, is no longer functionally and economically efficient for that use, which no longer retains its original utility and desirability, and may be used only by a tenant other than the original tenant, or similar class of tenants, for which it was designed.
- Provides that a county fiscal body may adopt an ordinance to provide that the county assessor be reimbursed for legal costs (in addition to other specified costs under current law) incurred by the county assessor in defending an appeal that is uncommon and infrequent in the normal course of defending appeals.

Current Status: 1/15/2019 - Coauthored by Senators Becker and Walker

All Bill Status: 1/15/2019 - Referred to Senate Tax and Fiscal Policy
1/15/2019 - First Reading
1/15/2019 - Authored By Brian Buchanan

State Bill Page: [SB 623](#)

ENERGY & THE ENVIRONMENT

HB 1347 MUNICIPALLY OWNED UTILITIES (BURTON W) Among other things:

- Provides that all rates, charges, and other fees for services rendered by a municipally owned utility to property occupied by someone other than the owner are payable by the person occupying the property if the account or other customer or billing records maintained by the utility for the property indicate that: (1) the property is occupied by someone other than the

owner; and (2) the person occupying the property is responsible for paying the rates, charges, and fees.

- Provides that rates, charges, and fees assessed by a municipally owned utility with respect to property occupied by someone other than the owner do not constitute a lien against the property.
- Specifies that these provisions do not: (1) prohibit a municipal legislative body from imposing any requirement to: (A) ensure payment by; or (B) the creditworthiness of; the person occupying the property; or (2) abrogate or limit the authority of the owner of a multi-unit building to engage in electrical submetering.

Current Status: 2/6/2019 - House Utilities, Energy and Telecommunications, (Bill Scheduled for Hearing); **Time & Location:** 1:30 PM, Rm. 156-C

State Bill Page: [HB 1347](#)

CODES & STANDARDS

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 a provision in a professional services contract that requires indemnification and defense of a promisee for certain liability is void. 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.

Current Status: 2/4/2019 - House Bills on Third Reading

State Bill Page: [HB 1015](#)

HB 1113 TELECOIL (MILLER D) Requires the fire prevention and building safety commission to adopt rules requiring the installation of audio frequency induction loop systems (AFILs) in Class 1 structures after June 30, 2020.

Current Status: 2/4/2019 - House Bills on Second Reading

State Bill Page: [HB 1113](#)

HB 1128 CONSTRUCTION PERMITS (MILLER D) Provides that a local unit may not require, as a condition precedent to granting, issuing, or approving certain permits for any Class 1 or Class 2 structures, completion of work upon which the performance bond or other surety was obtained prior to recording the secondary plat. Provides that a local unit may not require, as a condition precedent to granting, issuing, or approving a certificate of occupancy for any Class 1 or Class 2 structure, the completion of work upon which the performance bond or other surety was obtained prior to recording the secondary plat, unless required under certain state building laws or another law to meet a local unit's basic needs for public health and safety. Requires a local governmental agency to issue certain permits to a person not later than 12 business days after the person has filed a completed application and meets all required conditions, in certain instances.

Current Status: 2/4/2019 - House Bills on Second Reading

State Bill Page: [HB 1128](#)

HB 1258 DEPARTMENT OF HOMELAND SECURITY (FRYE R) Among other things:

- Provides that the fire prevention and building safety commission will adopt rules for regulated boiler and pressure vessels. (Current law provides that the boiler and pressure vessel rules board adopts rules for regulated boiler and pressure vessels.)
- Provides that: (1) the division of fire and building safety (division) shall conduct a program to audit inspection agencies and inspections conducted by inspection agencies; and (2) a boiler and pressure vessel inspector shall inspect and issue regulated boiler and pressure vessel operating permits to qualified applicants. (Current law provides that the division shall conduct a program of periodic inspections of regulated boiler and pressure vessels.)

- Sets forth insurance requirements needed to obtain a regulated boiler or pressure vessel operating permit.

Current Status: 2/4/2019 - House Bills on Third Reading

State Bill Page: [HB 1258](#)

HB 1266 SEDIMENT AND EROSION CONTROL IN CONSTRUCTION (MILLER D)

- Prohibits an MS4 community (a county, city, or town that administers a program under which construction plans including erosion and sediment control measures are submitted for approval) from requiring erosion and sediment control measures that are more stringent than the erosion and sediment control measures required by the administrative rule of the environmental rules board concerning storm water runoff associated with construction activity.
- Provides that a review authority (the department of environmental management, a soil and water conservation district, or an MS4 community) to which a construction plan is submitted must make a preliminary determination whether the construction plan is substantially complete before the end of the fifth working day after the day on which the construction plan is submitted to the review authority.
- Provides that if an MS4 community has made a conclusive favorable determination concerning a construction plan and work on the construction project has begun, the MS4 community may not order work on the construction project to stop on the grounds of inadequate erosion and sediment control measures unless the project site owner given written notice of the inadequacies of the erosion and sediment control measures and the inadequacies are not resolved within 72 hours after the project site owner receives the written notice.

Current Status: 2/4/2019 - House Bills on Second Reading

State Bill Page: [HB 1266](#)

SB 142 BUILDING PERMITS (BOHACEK M) Prohibits a building commissioner, building code official, or inspector for a local unit of government (unit) from issuing a building permit when the building commissioner, building code official, or inspector has a direct or indirect financial interest in the issuance of the permit. Requires a unit to adopt an ordinance to establish a procedure to address instances where a building commissioner, building code official, or inspector has a direct or indirect financial interest in the issuance of a permit.

Current Status: 2/4/2019 - Senate Bills on Third Reading

State Bill Page: [SB 142](#)

SB 230 UNLAWFUL INDEMNITY AGREEMENTS (MESSMER M) 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.

Current Status: 2/4/2019 - Senate Bills on Second Reading

State Bill Page: [SB 230](#)

HB 1269 BOARDS (GUTWEIN D) Provides that members appointed to boards staffed by the professional licensing agency: (1) have four year term limits; (2) may serve multiple terms; (3) serve at the pleasure of the governor; (4) must be removed in certain instances; and (5) in certain instances, may not have more than two members from the same congressional district. Removes members from the following boards: (1) Indiana board of accountancy. (2) Indiana board of optometry. (3) Speech-language pathology and audiology board. (4) Board of registration for architects and landscape architects. (5) Indiana plumbing commission. (6) Home inspectors licensing board. (7) Board of chiropractic examiners. (8) State board of registration for professional surveyors. (9) Indiana athletic trainers board. (10) State psychology board. (11) State board of funeral and cemetery service. (12) Board of podiatric medicine. (13) Indiana state board of health facility administrators. (14) Manufactured home installers. Repeals the following boards: (1) Committee of hearing aid dealer examiners. (2) Indiana auctioneer commission. (3) Private investigator and security guard licensing board. Repeals the midwifery

committee and transfers all duties performed by the medical licensing board of Indiana to the Indiana state board of nursing. Repeals the Indiana dietitians certification board and transfers the duties to the medical licensing board of Indiana. Repeals the boiler and pressure vessel rules board and regulated amusement device safety board and transfers all duties to the fire prevention and building safety commission. Provides that the department of homeland security may grant variances to rules adopted by the fire prevention and building safety commission, the Indiana emergency medical services commission, and the board of firefighting personnel standards and education. Repeals the counterterrorism and security council and the emergency alert system advisory committee. Establishes the governor's security council.

Current Status: 1/29/2019 - House Select Committee on Government Reduction, (Bill Scheduled for Hearing); ***Time & Location:*** 8:30 AM, Rm. 156-D

State Bill Page: [HB 1269](#)

