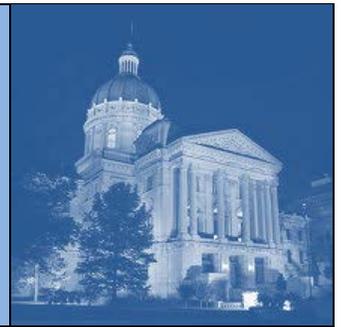


FAEGRE DRINKER

2020 Indiana Legislative Update #4

BOMA Indianapolis



February 2, 2020

The 2020 Indiana General Assembly is heading into the final week of the first half of the legislative session. Monday (February 3) is the last day for House bills to pass from the House, and Tuesday (February 4) is the deadline for passage of Senate bills from the Senate. Legislators will then take a few days off and return to the Statehouse on Monday, February 10, to begin work on bills passed by the other chamber.

Highlights from last week:

- A legislative proposal that would have pre-empted local restrictions on the installation, use and maintenance of certain building materials became contentious and died on the House calendar after the bill's author declined to call it down for a vote on amendments. **HB 1060** would have prohibited a state agency or political subdivision from adopting or enforcing a law that limits or prohibits the use or installation of a building product, a material, or an aesthetic method in the construction or maintenance of a Class 1 or Class 2 structure if the building product or material is approved for use by the state building code. A similar prohibition would have been imposed on the enforcement or adoption of maintenance and construction standards that included more stringent or detailed requirements in conflict with a standard published in the state building code for Class 1 and Class 2 structures. Exceptions were carved out for existing historic districts and conditions of financing, among other things.

The bill was supported by the Vinyl Siding Institute, Habitat for Humanity, and the Indiana Association of Realtors. Opponents included AIA, Indiana Fire Chiefs Association, Indiana Fire Inspectors Association and representatives of local government and historic districts. The bill is dead for the year.

- A proposal to make it easier for small businesses to claim a personal property tax exemption was approved by the Senate Tax & Fiscal Policy Committee and is now eligible for final passage from the Senate. **SB 358**, authored by Sen. Aaron Freeman (R-Indianapolis), would change how the assessed value of personal property is determined from its cost of acquisition to its current cash value. According to an analysis by the Legislative Services Agency, that could exempt an additional 66,500 businesses from the tax, and cost schools and local governments approximately \$18 million next year in lost tax revenue. This proposal comes one year after the legislature doubled the exemption threshold from \$20,000 to \$40,000 so businesses that acquired property that cost less than \$40,000 were not subject to the tax starting in 2021.

- Property owners who have successfully appealed their assessments may wait longer to get the full benefit of their refunds if **HB 1113** becomes law. Included within the Department of Local Government Finance's massive clean-up bill is language that would allow a county auditor to pay refunds of \$100,000 or greater in equal installments of property tax credits for up to five or 10 years, depending on the amount of the refund. Current law allows county auditors to elect to apply large real property tax refunds as credits against future tax bills over a period of five years or less. This election applies only to refunds of at least \$100,000 that result from appeals of real property tax assessments for assessment dates before 2020. Current law does not apply to any refund for a property under appeal that has been paid before May 1, 2015.

Under HB 1113, the authority to issue credits would be extended indefinitely. Refunds between \$100,000 and \$750,000 could be credited over a period of five years or less. Refunds over \$750,000 could be credited over a period of ten years or less. This provision first applies to refunds for assessment dates beginning in 2015 but does not apply if any refund for the property was paid before January 1, 2020.

On an unrelated note, our firm's merger with the Philadelphia-based firm Drinker Biddle became effective on February 1. The merged firm, Faegre Drinker, has more than 1,300 attorneys, consultants and professionals in 22 locations across the U.S., U.K. and China. Here's a link to a [news release](#) with more information.

Bill summaries: Following are updated summaries of bills still alive at this point in the legislative session that potentially impact BOMA members. Please let me know if you have questions or concerns.

REAL ESTATE & CONSTRUCTION

HB 1021 **LIENS (TORR J)** Permits a person to discharge a mechanic's lien by filing an indemnification, payment, or cash bond with the recorder's office in an amount equal to at least 150% of the lien or \$7,500, whichever is greater. Requires the surety responsible for issuing an indemnification or payment bond to: (1) be authorized to do business in Indiana; and (2) be rated at least "A-" by at least one nationally recognized investment rating service. Specifies certain requirements concerning the recording of an indemnification or payment bond. Provides that the filing of a bond discharges the property and liability of a person served by a lien claimant not less than 30 days after the filing of a bond. Provides that a contractor or subcontractor may adjudicate the adequacy of a bond in certain instances. Provides that the liability of a person served by a lien claimant may not be discharged while the adequacy of a bond is being adjudicated. Repeals the current statute concerning the filing of a written undertaking to discharge a lien.

Current Status: 2/3/2020 - House Bills on Third Reading

State Bill Page: [HB 1021](#)

HB 1334 **RADON MITIGATION (EBERHART S)** Provides the state department of health (state department) with emergency rulemaking authority to amend provisions in the state department's administrative rules concerning radon. Requires the state department to amend provisions in the state department's administrative rules concerning radon using the regular rulemaking process before December 31, 2021. Provides that the provisions added by the bill expire July 1, 2022.

Current Status: 1/29/2020 - Referred to Senate

All Bill Status: 1/28/2020 - Third reading passed; Roll Call 106: yeas 98, nays 0
State Bill Page: [HB 1334](#)

- SB 71** **ADVERSE POSSESSION STATUTE OF LIMITATIONS (DORIOT B)** Amends the statute concerning the statute of limitations for actions for the recovery of the possession of real estate to provide that such an action that: (1) involves a line located and established by a professional surveyor; and (2) accrues before the lines are located and established by the surveyor; must be commenced before the expiration of the appeal period set forth in the statute governing county surveyors. Amends the Indiana Code provision concerning the establishment of property lines by means of a legal survey to specify that the lines established are binding on all affected landowners, including a landowner who claims title under a claim of adverse possession. Provides that certain information must be contained in a notice of survey sent to adjoining landowners, and that a legible copy of the plat of the legal survey must be enclosed with the notice.
Current Status: 1/30/2020 - Cosponsors: Representatives Manning and Miller
State Bill Page: [SB 71](#)
- SB 132** **DEPARTMENT OF HOMELAND SECURITY (CRIDER M)** Among other things, provides that a two-dimensional bar code shall be displayed in or on each regulated lifting device.
Current Status: 1/21/2020 - added as coauthor Senator Randolph
State Bill Page: [SB 132](#)
- SB 229** **MAINTENANCE OF REGULATED DRAINS (SPARTZ V)** Provides that a permit is not required from the Indiana department of environmental management for the reconstruction or maintenance of regulated drains for purposes of the law concerning state regulated wetlands.
Current Status: 1/21/2020 - added as third author Senator Rogers
State Bill Page: [SB 229](#)
- SB 230** **LEASING OF LOCAL UNIT PROPERTY (SANDLIN J)** Provides that a political subdivision may lease real property of the political subdivision that is located between the curb of a street and the front of commercial property, including a parkway strip, tree row, verge, or sidewalk, to the owner or property manager of the commercial property: (1) upon terms agreed to between the political subdivision and the property owner or property manager; and (2) without competitive bidding. Specifies requirements for the lease. Provides that upon execution of the lease, the property of the political subdivision shall be under the maintenance, control, and supervision of the property owner or the property manager, subject to the public's right to use the sidewalk as a walkway. Requires the lessee to: (1) assume the liability of the political subdivision for personal injuries and property damage to third parties occurring on the property; and (2) maintain insurance coverage in amount determined sufficient by the political subdivision. Requires the lease to be approved by at least a two-thirds vote of the members of the fiscal body of the political subdivision and recorded in the office of the county recorder.
Current Status: 1/28/2020 - House sponsor: Representative Burton
All Bill Status: 1/28/2020 - Third reading passed; Roll Call 78: yeas 50, nays 0
State Bill Page: [SB 230](#)
- SB 358** **BUSINESS ASSOCIATIONS OF REAL ESTATE AGENTS (MERRITT J)** Allows a broker company to pay compensation directly to a business entity owned by a licensed broker that has been formed for the purpose of receiving compensation earned by the broker.
Current Status: 1/28/2020 - added as coauthor Senator Randolph
All Bill Status: 1/28/2020 - Cosponsor: Representative Clere
1/28/2020 - House sponsor: Representative Manning
1/28/2020 - Third reading passed; Roll Call 88: yeas 50, nays 0
State Bill Page: [SB 358](#)
- SB 405** **EXEMPTIONS FROM DESIGN RELEASE REQUIREMENTS (GARTEN C)** Provides that the design

release requirements for certain projects do not apply to certain construction that is exempted even if: (1) a part of; (2) supplemental to; or (3) an accessory of; any construction that would otherwise require a design release.

Current Status: 2/3/2020 - Senate Bills on Second Reading

State Bill Page: [SB 405](#)

PLANNING & DEVELOPMENT

HB 1014 **PLAN COMMISSIONS** (SAUNDERS T) Provides that, for purposes of the advisory planning law, the county surveyor's designee must be a resident of the county to serve on the county plan commission. Provides that a member appointed to a plan commission to fill a vacancy or to serve as an alternate member must meet the same requirements, including residency requirements, as a regular member of the plan commission.

Current Status: 1/15/2020 - Referred to Senate

State Bill Page: [HB 1014](#)

SB 20 **COUNTY PLAN COMMISSIONS** (GASKILL M) Allows a county agricultural extension educator (educator) serving on a county plan commission who is not a resident of the county to continue to serve on the plan commission until: (1) October 1, 2020; or (2) the date set forth in a county legislative body ordinance that is after October 1, 2020, and not later than October 1, 2021. Provides that an educator who is not a resident of the county shall serve the commission in a nonvoting advisory capacity. Provides that, for purposes of the advisory planning law, the county surveyor's designee must be a resident of the county to serve on the county plan commission. Adds a provision that requires a person appointed to a plan commission, to fill a vacancy or to serve as an alternate member, to meet the same requirements as the member they are appointed to replace.

Current Status: 1/27/2020 - Referred to House

State Bill Page: [SB 20](#)

SB 23 **ANNEXATION** (BOOTS P) Provides, with certain exceptions, that the following apply to annexations for which an annexation ordinance is adopted after March 31, 2020: (1) A municipality initiating an annexation must file a petition with the court signed by at least: (A) 51% of the owners of land that is not exempt from property taxes in the annexation territory; or (B) the owners of more than 75% in assessed valuation of land that is not exempt from property taxes in the annexation territory. (2) If the petition filed by the municipality has enough signatures, the court must hold a hearing to review the annexation. (3) Adds provisions regarding the validity of a signature on an annexation petition. (4) Eliminates the remonstrance procedure for annexations and reimbursement of remonstrator's attorney's fees and costs. (5) Provides that remonstrance waivers are void for annexations for which the annexation ordinance is adopted after March 31, 2020. (6) Provides that a settlement agreement in lieu of annexation that is executed after March 31, 2020, is void. (7) Eliminates provisions regarding the contiguity of a public highway. Eliminates provisions that prohibit an annexation from taking effect in the year preceding the year that a federal decennial census is conducted.

Current Status: 1/28/2020 - Referred to House

All Bill Status: 1/27/2020 - added as coauthor Senator Buck

1/27/2020 - House sponsor: Representative Thompson

1/27/2020 - Third reading passed; Roll Call 53: yeas 37, nays 12

State Bill Page: [SB 23](#)

SB 78 **SHOVEL READY SITE DEVELOPMENT CENTER** (MESSMER M) Defines "office" as the office of community and rural affairs for purposes of the law governing the shovel ready site development center (center). Provides that the office shall, in cooperation with the Indiana economic development corporation and political subdivisions, administer the center to enable political subdivisions to obtain permits to create sites that are ready for economic development. Provides

that the office shall serve as the certifying body for acceptance into the program and determine the criteria to be used to certify sites.

Current Status: 1/21/2020 - added as coauthor Senator Randolph

State Bill Page: [SB 78](#)

SB 264 **CERTIFIED TECHNOLOGY PARKS** (HOLDMAN T) Amends provisions that allow a certified technology park to capture an additional amount of incremental income taxes once it has reached its limit on deposits to do the following: (1) Increase the annual additional deposit amount from \$100,000 to \$500,000, and cap the total additional amount that may be captured at not more than \$2,000,000. (2) Require a certified technology park to meet certain reporting and performance requirements in order to be eligible to capture the additional amount of incremental income taxes.

Current Status: 2/3/2020 - Senate Bills on Third Reading

State Bill Page: [SB 264](#)

SB 350 **CENTRAL INDIANA REGIONAL DEVELOPMENT AUTHORITY** (HOLDMAN T) Authorize counties and municipalities within the Indianapolis metropolitan area to establish a central Indiana regional development authority pilot that will sunset on July 1, 2025. Requires counties and municipalities that wish to establish the development authority to adopt substantially similar resolutions to adopt a preliminary strategic economic development plan (preliminary development plan). Provides that the development authority shall be governed by a strategy committee composed of members selected according to the terms of the preliminary development plan adopted to establish the development authority. Specifies the duties of the development authority. Requires the development authority to prepare a comprehensive strategic economic development plan. Amends the definition of "economic development projects" under the local income tax statute. Codifies the establishment and governing provisions of the Indianapolis metropolitan planning organization. Makes conforming changes.

Current Status: 2/3/2020 - Senate Bills on Third Reading

State Bill Page: [SB 350](#)

TAX & FINANCIAL ISSUES

HB 1113 **DEPARTMENT OF LOCAL GOVERNMENT FINANCE** (LEONARD D) Among other things:

- Provides that, for purposes of determining the assessed value of real property for an individual who has received an over 65 deduction, a disabled veteran deduction, or an over 65 circuit breaker credit, subsequent increases in assessed value are not considered unless the increase is attributable to physical improvements to the property.
- Provides that a taxpayer may appeal a change in the assessed value of personal property made by a township assessor or county assessor by filing a written notice of review with the county property tax assessment board of appeals (PTABOA). Provides that a taxpayer may appeal a change in the assessed value of personal property made by a PTABOA by filing a written notice of review with the Indiana board of tax review. Removes existing language that provides that, if a PTABOA fails to change an assessed value claimed by a taxpayer on a personal property return and give notice of the change within the time prescribed, the assessor may file a petition for review of the assessment by the Indiana board.
- Provides that, if a taxpayer is owed a refund that exceeds \$100,000 for excessive property taxes paid on real property, a county auditor may pay the property tax refund in equal installments of property tax credits for up to five or 10 years, depending on the amount owed to the taxpayer.
- Modifies the standard formula for the calculation of certified shares of local income tax revenue in Hamilton County after 2020 and before 2024 to calculate adjusted amounts of certified shares for the city of Carmel and the city of Fishers.
- Provides that, in the period beginning March 1, 2020, and ending March 1, 2022: (1) money

in the fund of a flood control improvement district (district) established after December 31, 2019, may be used for a flood control works project in a location outside the boundaries of the district; (2) money received by the district from bonds issued for purposes of flood control works within the district may be applied to the payment or reimbursement of the cost of a flood control works project in a location outside the boundaries of the district; and (3) money received from bonds for which revenue of the consolidated city's storm water fund was pledged or assigned may be applied to the payment of the costs of a flood control works project of the district, and money in the flood control improvement fund of the district may be applied to reimburse debt service payments on the bonds, even though the flood control works project was in a location outside the boundaries of the district; if the flood control works project outside the boundaries of the district directly benefits special flood hazard property within the district.

- Provides that a person that has certain business relationships with another person that owes delinquent taxes, special assessments, penalties, interest, or costs attributable to a prior tax sale is prohibited from bidding on or purchasing real property at a tax sale or from bidding on, purchasing, receiving, or leasing a tract under the law governing the disposal of property by local governments.

Current Status: 1/30/2020 - Senate sponsor: Senator Bassler

All Bill Status: 1/30/2020 - Third reading passed; Roll Call 138: yeas 94, nays 0

State Bill Page: [HB 1113](#)

SB 46 INTERIM STUDY COMMITTEE (FREEMAN A) Urges the legislative council to assign to an appropriate interim study committee the task of studying storm water fees.

Current Status: 2/3/2020 - Senate Bills on Second Reading

State Bill Page: [SB 46](#)

SB 67 TOWNSHIP HOMELESS ASSISTANCE (SANDLIN J) Provides that a township trustee of a township that has a population of more than 10,000, shall, if the trustee considers it advisable, place in the county home or provide township assistance to a homeless person whose legal residence: (1) is not in the township; or (2) cannot be ascertained. Provides that a township trustee of a township that has a population of less than 10,000, may, if the trustee considers it advisable, place in the county home or provide township assistance to a homeless person whose legal residence: (1) is not in the township; or (2) cannot be ascertained. Requires each township trustee in a county to collaborate and prepare a list of public and known private resources that is: (1) available to the homeless population for each township in the county; and (2) distributed and published on the county's Internet web site not later than March 1 of each year.

Current Status: 1/21/2020 - added as coauthor Senator Taylor G

State Bill Page: [SB 67](#)

SB 190 CONTROLLED PROJECTS (HOLDMAN T) Amends the definition of a "controlled project" to exclude projects for: (1) roads; (2) streets; (3) bridges; and (4) road, street, or bridge appurtenances.

Current Status: 1/28/2020 - added as coauthor Senator Taylor G

All Bill Status: 1/28/2020 - added as coauthor Senator Bohacek

1/28/2020 - House sponsor: Representative Thompson

1/28/2020 - Third reading passed; Roll Call 73: yeas 39, nays 11

State Bill Page: [SB 190](#)

SB 408 VARIOUS TAX MATTERS (HOLDMAN T) Among other things, provides that a taxpayer is entitled to claim a historic rehabilitation tax credit granted for a year other than the year in which the preservation or rehabilitation of the historic property was performed and certification provided, notwithstanding the expiration of the historic rehabilitation tax credit chapter on January 1, 2019, and the cap on the amount of credits allowed in a state fiscal year beginning after June 30, 2016.

UTILITIES & THE ENVIRONMENT

HB 1165 MUNICIPALLY OWNED UTILITIES (BURTON W)

- Makes the following changes to the Indiana Code provision that provides that in the case of property occupied by someone other than the owner, the person occupying the property is responsible for rates, charges, and other fees for utility services (other than sewer services) provided to the property by a municipally owned utility:

(1) Specifies that the occupant is responsible for the rates, charges, and fees for utility services if: (A) the municipally owned utility has received the name and contact information of the owner or manager of the property from the occupant, as required under the statute; or (B) the account or other customer or billing records maintained by the utility for the property otherwise indicate that the property is occupied by someone other than the owner.

(2) Prohibits a municipally owned utility or a municipal legislative body, as a condition of providing utility services to the property or otherwise, from requiring the property owner to: (A) ensure the creditworthiness of the occupant; or (B) assume: (i) responsibility for payment of any rates, charges, or other fees for utility services rendered to the property; or (ii) joint and several liability with respect to unpaid utility bills invoiced to the occupant; by signing or cosigning certain agreements with the municipality or the municipally owned utility, or by any other means.

(3) Provides that if a municipality provides both sewer service and one or more other utility services to the property: (A) all rates, charges, and other fees for the other utility services are payable by the person occupying the property, regardless of whether the municipality combines billing for sewer service and the other utility services; and (B) the municipality shall not attempt to circumvent, through the use of combined billing or by any other means, the liability of the occupant for the payment of all rates, charges, and other fees imposed for the other utility services.

(4) Provides that if a property owner aggrieved by a municipality's or a municipally owned utility's violation of these provisions obtains a judgment in an action brought against the municipality or the municipally owned utility, the court shall award the property owner: (A) reasonable attorney's fees, court costs, and other reasonable expenses of litigation; (B) prejudgment and postjudgment interest at a rate of 8%; and (C) other relief that the court determines appropriate.

Current Status: 1/30/2020 - Referred to Senate

All Bill Status: 1/29/2020 - Third reading passed; Roll Call 129: yeas 64, nays 31

State Bill Page: [HB 1165](#)

- ### HB 1414 ELECTRIC GENERATION (SOLIDAY E)
- Provides that a public utility that owns and operates a reliable capacity electric generation resource shall operate and maintain the unit in a manner reasonably intended to secure the availability of the unit for dispatch and for providing reliable service to customers of the public utility. Prohibits a public utility from terminating a power agreement with a legacy generation resource in which the public utility has an ownership interest unless the public utility provides the utility regulatory commission (IURC) with at least three years advance notice of the termination. Provides that the IURC shall determine the reasonable costs incurred by the public utility under the power agreement and allow the public utility to recover those costs in a fuel adjustment charge proceeding. Provides that a public utility shall provide the IURC with at least six months advance notice of the public utility's intention to retire, sell, or transfer a reliable capacity resource with a capacity of at least 80 megawatts if such intention is not

set forth in the public utility's preferred portfolio in the public utility's most recent integrated resource plan for which the IURC has provided a final director's report. Provides that a public utility may not retire, sell, or transfer a reliable capacity resource with a capacity of at least 80 megawatts unless: (1) the public utility first notifies the IURC of the public utility's intent to do so; and (2) the IURC conducts a public hearing to receive information concerning the reasonableness of the planned retirement, sale, or transfer. Requires the IURC to conduct the required hearing and issue its findings and conclusions concerning the reasonableness of the planned retirement, sale, or transfer not later than 120 days after the date of the public utility's notice to the IURC. Provides that if a public utility cites a federal mandate as the basis, in whole or in part, for the planned retirement, sale, or transfer of the unit, the IURC may consider in making the IURC's required findings and conclusions whether the cited federal mandate: (1) is in force; (2) has not expired or been revoked; and (3) is not merely anticipated to be enacted; at the time of the public utility's notice. Provides that a public utility is entitled to recover in a fuel adjustment charge proceeding the cost of not more than 90 days of reserve fuel supply, with up to 60 days of such reserve stored at any location that provides availability of the fuel supply upon not more than 48 hours notice. Provides that these provisions expire May 1, 2021. Provides that in awarding high value workforce ready credit-bearing grants, the commission for higher education, in conjunction with the department of workforce development, shall give priority to an applicant who is a dislocated coal mine employee.

Current Status: 2/3/2020 - House Bills on Third Reading

State Bill Page: [HB 1414](#)

SB 254

WATER AND WASTEWATER UTILITIES (CHARBONNEAU E) Amends the law allowing the adjustment of a water or wastewater utility's rates and charges to enable the utility to recover the cost of eligible infrastructure improvements, by providing that the general maximum limit on the revenues used in determining the adjustment does not apply to infrastructure improvement costs associated with the construction, reconstruction, or improvement of a highway, street, or road. Amends the law that allows a public water utility to treat the costs of replacing customer-owned lead service lines as eligible infrastructure improvements for which a utility's rates and charges may be adjusted, by providing that the law applies to municipally owned utilities as well as public utilities. Establishes a procedure under which a public utility, municipally owned utility, or not-for-profit utility that provides water or wastewater service to the public and is under the jurisdiction of the commission for the approval of rates and charges may seek to recover, through a periodic rate adjustment, the cost of certain utility plant or equipment expenditures that are related to compliance with environmental requirements or made for health, safety, or environmental protection purposes.

Current Status: 1/27/2020 - Referred to House

State Bill Page: [SB 254](#)