



**March 22, 2019**

## TOP STORIES

### **Worker's Comp Bill Passes Senate Unanimously; All Eyes on Conference Committee for Possible Benefit Increase**

*House Bill 1182 – Worker's Compensation  
Author: Rep Matt Lehman (R-Berne)*

Provides for worker's compensation purposes that an employee who leaves work to serve as a volunteer firefighter or member of a volunteer emergency medical services association is considered an employee of the firefighting unit while in the performance of duties as a volunteer firefighter or volunteer member. Increases the maximum amount of burial expenses that an employer must pay under the worker's compensation act for the burial expenses of a covered employee who dies from an injury by an accident arising out of the employee's employment from \$7,500 to \$10,000.

**Chamber Position:** Support

**The Latest:** Passed the Senate without an amendment by a vote of 48-0 and is now eligible for conference committee (bill was amended in committee last week).

**Chamber Action/Commentary:** As mentioned previously, HB 1182 most likely will become the vehicle bill to address worker's comp benefit increases of 2% that were in Sen. Karen Tallian's (D-Portage) SB 358, which will probably not be heard in the House Employment and Labor Committee. Discussion in the hallway has been that if there is a worker's comp benefit increase, it will most likely be tied to a cap on reimbursement rates for ambulatory surgical centers. However, capping the remainder of all providers that were not included in the reimbursement rates for hospitals a few years ago has been discussed. Representative Lehman has indicated that he will not move any benefit increase without a corresponding benefit for employers – something the Chamber has staunchly advocated for – but it is still uncertain as to what he will ultimately do. He may let the worker's comp market stabilize for one more year and do nothing now, and then return next year and go after all providers.

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## **Chamber Gets Clarifications; Now Neutral on Telephone Solicitation Bill**

*House Bill 1123 – Telephone Solicitation  
Authored by Rep. Jeff Ellington (R-Bloomington)*

This bill adds the following to the list of telephone calls that are exempt from the state's "do not call" statute: any telephone call made to a consumer by a communications service provider that has an established business relationship with the consumer, as well as any telephone call made to a consumer by a financial institution or a person licensed by the Indiana Department of Financial Institutions to engage in first lien mortgage transactions or consumer credit transactions that has an established business relationship with the consumer. The bill allows the Consumer Protection Division of the attorney general's office to use the Consumer Protection Division Telephone Solicitation Fund to administer the statutes concerning the registration of telephone solicitors and the regulation of automatic dialing machines and to reimburse county prosecutors for expenses incurred in extraditing violators of these and other state and federal statutes concerning telephone solicitations. The bill also urges the Interim Study Committee on Corrections and Criminal Code study whether existing criminal penalties for violations of specified telephone solicitation statutes should be increased. Full details at <http://iga.in.gov/legislative/2019/bills/house/1123>.

**Chamber Position:** Neutral (previously opposed)

**The Latest:** The Senate Utilities Committee heard this bill on Thursday and after much questioning of the author, it passed 10-0 and is now eligible for action on the Senate floor.

**Chamber Action/Commentary:** Initially, the Chamber opposed this bill because it appeared to increase penalties against an unknowing executive officer when an employee violates the telephone solicitation law. It also appeared to have a chilling effect on business-to-business transaction. However, we did not take a position on the bill in committee this week because these specific issues have been clarified by the author and the attorney general's office. The language in Ind. Code § 24-4.7-2-2 defines consumer to mean a residential telephone subscriber. And Ind. Code §24-4.7-5-2, in conjunction with the amended bill, insulates an executive officer from liability if the person establishes by a preponderance of the evidence that they did not know and, in the exercise of reasonable care, could not have known of the violation.

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## **IN OTHER NEWS**

### **Technology and Innovation Data Centers Bill Passes Ways and Means Committee Unanimously**

*House Bill 1405 – Taxation of Data Centers  
Authored by Rep. Ed Soliday (R-Valparaiso)*

Provides that a county or municipal fiscal body may designate an area in which a property tax exemption will be provided for certain enterprise information technology equipment. Provides a state sales and use tax "exemption" for the purchase of certain data center equipment that is located in a data center that results in a total minimum qualified investment (including construction costs) within five years, ranging from at least \$25 million to more than \$150 million, depending on the population of the county in which the "qualified data center" is located. Requires that 75% or more of the materials, professional services,

and labor used for the rehabilitation or construction of a qualified data center must be purchased from Indiana vendors. Provides that costs that meet the requirement are exempt from the state gross retail tax. Requires a qualified data center user to apply to the Indiana Economic Development Corporation (IEDC) for a specific transaction "exemption certificate." Requires a qualified data center user to enter into an agreement with the IEDC as a condition of receiving an exemption certificate.

**Chamber Position:** Support

**The Latest:** On Tuesday, the Senate Tax and Fiscal Committee amended the bill to include the requirement that "75% or more of the materials, professional services and labor used" during the data center construction process must be purchased from Indiana vendors. The committee passed the bill 14-0 after hearing testimony from numerous stakeholders.

Then on Thursday, the bill was amended on second reading to extend the life of the exemption from 25 to 50 years for qualified data centers if the qualified investment is \$750 million or greater. The bill is now on third reading and awaits a full Senate vote.

**Chamber Action/Commentary:** The Chamber, and specifically our Economic Development Policy Committee Chair Larry Gigerich, has been a member of the coalition supporting this policy from the outset and was pleased that the committee passed the amended bill unanimously.

The Chamber testified in support of the bill during Tuesday's committee hearing, along with the Indiana Economic Development Association, the Northwest Indiana Forum and the Indiana State Building and Construction Trades, as well as stakeholders who are prepared to take advantage of the new law for a specific project in Northwest Indiana – NetChoice & Digital Crossroads.

Cloud computing is the new normal for this industry and demand for data centers is high and rising. Currently, Indiana is not considered by site selectors due to the lack of any tax incentive. The property and sales tax exemptions contained in HB 1405, combined with the other benefits of doing business in Indiana, will allow Indiana to compete for future, large-scale data center projects.

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**Education and Workforce Development**

**Bills to Appoint K-12 Schools Chief in 2021, Increase Teacher Support Headed to Governor**

**House Bill 1005 (State Superintendent of Public Instruction)**, authored by Rep. Brian Bosma (R-Indianapolis), passed the Senate on Wednesday 29-19 and is now on its way to the Governor for his signature. This Chamber priority bill moves up the date for making the state superintendent an appointed position from 2025 to 2021, when it will become the secretary of education. Indiana's change from an elected to an appointed K-12 schools chief began with legislation passed by the General Assembly last year. State Superintendent Jennifer McCormick's announcement that she would not seek re-election cleared the way to move up the appointment date to 2021. Indiana now joins 38 other states that appoint their K-12 education chiefs. The Chamber has long advocated for an appointed state superintendent to ensure greater coordination and policy alignment between the Governor and the agencies charged with carrying out the state's education priorities.

**House Bill 1009 (Teacher Residency Grant Pilot Program)**, authored by Rep. Dale Devon (R-Granger),

cleared the Senate this week 37-11 and is now headed to the Governor's desk. This Chamber-supported measure establishes the teacher residency grant pilot program (and associated fund) to provide mentor teachers to new teachers for a one-year period with support from a college teacher preparation program. Teacher residency programs aim to smooth new teachers' transition to the classroom and help improve teacher retention rates. Given that teacher quality has been shown to be the most significant contributing factor to student achievement, the Chamber applauds efforts, like teacher residency programs, that promise to better support new teachers and keep effective teachers in the classroom longer.

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## **Labor Relations**

### **No Retroactive Amendment for Wage Assignment But Effective Immediately; Nurse Licensure Compact Gets Unanimous Support**

**Senate Bill 99, (Wage Assignments for Clothing and Tools)**, authored by Sen. Phil Boots (R-Crawfordsville), was amended and passed by the House Employment, Labor and Pensions Committee 13-0. The bill provides that a wage assignment may be made for the rental of uniform shirts, pants and job-related clothing, as well as the for the purchase of equipment or tools necessary to fulfill the duties of employment.

We reported that last week there was an attempt to amend the bill to make it retroactive, but that attempt was abandoned and the committee settled for an amendment which made the legislation effective upon passage. We do not expect there to be any further difficulty with the bill and it should sail smoothly through the full House.

**HB 1344 (Nurse Licensure Compact)**, authored by Rep. Ed Clere (R-New Albany), passed the Senate Health Committee unanimously this week. The measure specifies requirements for participation by the state in a multistate nurse licensure compact. The most interest in the bill comes from the southern part of the state where it would allow for nurses to practice in Indiana and Kentucky. The bill addresses a workforce shortage in nursing among facility providers in the Louisville corridor. Amelia McClure from Hosparus Health (a member of the Chamber Health Care Policy Committee) testified in favor of the bill on behalf of the Chamber.

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## **Taxation and Public Finance**

### **Chamber Urges Ways and Means Committee to Ease Complexities in RV Sales to Non-Resident Buyers**

*Senate Bill 131 – Sales Tax on Recreational Vehicles  
Authored by Sen. Blake Doriot (R-Syracuse)*

Removes the expiration of the provision in current law that provides that the sales tax rate on certain cargo trailers or recreational vehicles is the rate of the other state or other country in which the cargo trailer or recreational vehicle will be titled or registered under certain circumstances. (This provision was set to expire on June 30, 2019.) Amends the provision to apply only to sales that are made to a resident of a nonreciprocal state or a foreign country. Repeals the provision that authorizes the Department of Revenue to enter into reciprocal agreements with other states concerning a sales tax exemption for cargo trailers and recreational vehicles that will be purchased in a state by a nonresident and then titled in another state.

**Chamber Position:** Support

**The Latest:** The House Ways and Means Committee heard testimony and is holding the bill for possible amendment.

**Chamber Action/Commentary:** The Legislature has struggled with this issue for several years now. The objective is to determine the most desirable policy and procedures regarding the collection of sales tax when an out-of-state resident buys a recreational vehicle in Indiana with the intent to register it in their home state.

Complexities associated with collecting Indiana sales tax when the buyer is from a state that we do not have reciprocal collection agreements with has made Indiana a much less desirable state in which to locate as an RV sales dealer. So even though Indiana is the nation's RV manufacturing capital, we don't serve in the logical role as a retail sales hub as well – because non-residents don't want to deal with the sales tax hassles. The Chamber has supported numerous past legislative efforts to rectify this situation. This week our testimony focused on: "We manufacture this huge percentage of RVs here, we ought to be selling a volume of them here too." Our state laws need to establish an environment for Hoosier RV dealerships to thrive in the backyard of the manufacturers, instead of letting neighboring states do so.

**Online Booking Controversy Attached to Marketplace Facilitators Bill**

*Senate Bill 322 – Marketplace Facilitators  
Authored by Sen. Travis Holdman (R-Fort Wayne)*

Provides that a marketplace facilitator is required to collect and remit state sales tax as a retail merchant when it facilitates a retail transaction for sellers on the marketplace facilitator's marketplace. Specifies circumstances in which a marketplace facilitator or a seller would not be required to collect and remit the state sales tax on the retail sale. Retains provisions that go into effect on July 1, 2019, for state sales tax collection and remittance requirements of a person or marketplace facilitator that facilitates a retail transaction for sellers that rent or furnish rooms, lodgings or accommodations in Indiana.

**Chamber Position:** Support

**The Latest:** Heard by the House Ways and Means Committee, but no vote yet.

**Chamber Action/Commentary:** The Chamber once again testified in support of this bill, which provides a reasonable approach to addressing the administrative and compliance issues that exist now that online sales are subject to tax following the U.S. Supreme Court decision in *Wayfair v. South Dakota* in May 2018. Under the new scheme of things, states across the country are obligating those who operate internet platforms to bring buyers and sellers together, referred to as "marketplace facilitators," to collect the associated sales tax from the buyers at the point of the online transaction. This is a sensible and convenient mechanism to collect the tax. However, the bill has reignited what has been an issue since well before the *Wayfair* decision – whether sales tax should be applied to the fee paid to online hotel booking platforms. This debate is now dominating and overshadowing the primary purpose of the marketplace facilitators bill. The Chamber is not weighing in on this ancillary issue.

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## **Quick Takes**

### **Priority Water Infrastructure Bill Leads Trio of Utility and Infrastructure Bills Making Progress in Committee**

**House Bill 1406 (Water Infrastructure Assistance Fund and Program)**, authored by Rep. Ed Soliday (R-Valparaiso), cleared the Senate Utilities Committee on Thursday 10-0 and now is eligible for action on the Senate floor. The Indiana Chamber testified in support of this important bill, which annually appropriates \$20 million to the Water Infrastructure Assistance Fund. The measure promotes sustainability of water resources and attempts to keep costs as low as possible.

**House Bill 1470 (Utility Transmission Improvements and Costs)**, authored by Rep. Soliday, was voted out of the Senate Committee on Utilities 8-3 this week. This Chamber-backed bill amends the statute to fix identified deficiencies concerning transmission, distribution and storage system improvements charges (TDSIC) for electric and gas utilities, plus requires a utility to update its TDSIC plan every year.

**Senate Bill 472 (Utility Rates and Acquisitions)**, authored by Sen. Eric Koch (R-Bedford), was heard this week by the House Utilities Energy and Telecommunications Committee, where Rep. Soliday introduced an amendment to the bill to establish an energy task force that would contemplate an energy policy. A vote will be taken on the bill and the amendment on March 27. The Indiana Chamber testified in support of the bill and the amendment. This bill tweaks existing law and adds some clarification to issues that have recently been litigated. It should reduce litigation costs of water/wastewater utilities going forward that would otherwise have been rolled into utility rates as an increase. It also promotes efficiencies in the process and economies of scale in water infrastructure.

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## **Civil Justice**

### **Improved Administrative Law Judge Bill Has Gained Much Support**

*House Bill 1223 – Administrative Law Judges*  
*Authored by Rep. Greg Steuerwald (R-Danville)*

Establishes the office of administrative law proceedings within the state personnel department to hear certain administrative proceedings that result in a finding of fact determining the legal rights, duties or privileges of a party after an opportunity for an evidentiary hearing. Specifies the administrative proceedings over which the office has jurisdiction. Provides a list of agencies over whose administrative proceedings the administrative law judges from the office do not preside. Provides that the office shall have a director who is responsible for administering the office, hiring administrative law judges, and assigning administrative law judges to administrative law judges.

**The Latest:** The bill was passed unanimously by the Senate Judiciary Committee this week.

**Chamber Position:** Support

**Chamber Action/Commentary:** In committee, the Chamber led in the endorsement of this bill, which now enjoys broad support. But initially, before it was first heard in the House, we and others were concerned as to how this new state office of administrative judges would function and to which bodies its jurisdiction would apply. We engaged with the author and after several consultations, the bill has evolved into one we embrace as a positive step in enhancing the quality and objectivity of many administrative proceedings. The author agreed that certain exemptions were warranted based on the subject matter

expertise and independence of administrative law judges employed by some state entities. The Chamber much appreciates the willingness of the author to listen to our reservations and work with us in determining which agencies and entities should appropriately be subject to the new office and which should not.

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## **Infrastructure**

### **Latest on Bills to Repeal Authority Outside of Jurisdictional Bounds, Add Protections for Critical Infrastructure Facilities**

*Senate Bill 535 – Extraterritorial Powers of Cities and Towns  
Authored by Sen. Phil Boots (R-Crawfordsville)*

This bill would repeal the general authority of a 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. Repeals a provision that allows a municipality to exercise powers regarding watercourses within 10 miles outside its corporate boundaries. 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. Municipalities would still have the ability to regulate a two-mile fringe outside of its corporate limits in certain circumstances.

**Chamber Position:** Support

**The Latest:** The House Select Committee on Government Reduction heard the bill on Tuesday taking testimony from a diverse group. Two amendments were offered at the hearing. One would exempt airport authorities from the bill. The other clarifies what existing ordinances, outside of the municipalities' jurisdiction, would be grandfathered under the proposed legislation. A vote on the bill is being held until the next committee hearing on March 26.

**Chamber Action/Commentary:** The Indiana Chamber testified in support of this bill. We believe local entities should not be authorized to impose restrictions or obligations on property owners and citizens outside their jurisdictional bounds. Otherwise, this essentially gives elected officials the ability to govern those who have no say in their election. Furthermore, businesses should not be subject to requirements established by a governmental entity within whose jurisdiction they are not situated. The current myriad of overlapping authority engenders jurisdictional confusion and regulatory conflicts.

At the hearing, primary opposition to the measure came from citizen groups that don't want wind farms located near them and AIM (Accelerate Indiana Municipalities), which wants municipalities to retain their existing authority outside their boundaries.

*Senate Bill 471 – Offenses Involving Critical Infrastructure  
Authored by Sen. Eric Koch (R-Bedford)*

This bill provides added protections for a critical infrastructure facility. Provides that a person who recklessly, knowingly or intentionally damages or defaces property of a critical infrastructure facility commits the offense of critical infrastructure facility mischief. Provides increased criminal penalties and civil remedies for offenses involving a critical infrastructure facility. This bill defines critical infrastructure to include energy infrastructure, pipelines, water infrastructure, certain business property, as well as protected categories as identified by federal law.

**Chamber Position:** Support

**The Latest:** The House Judiciary Committee heard the bill on Monday and adopted two minor clarifying amendments to the bill. The bill passed 8-3 and is now eligible for further action on the Senate floor.

**Chamber Action/Commentary:** The Indiana Chamber indicated its support of this bill, as it is designed to protect utility infrastructure, certain business assets, water infrastructure and other important infrastructure. Increased security of the critical infrastructure will ensure reliable services, which can reduce costly shutdowns for all. Those who opposed the bill contend that it will have a negative impact on free speech and peaceful demonstration. That seems to be a bit off the mark as this bill pertains to criminal activity associated with private property.

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## TAKE ACTION!

If Indiana is going to enact a real bias/hate crimes law this year – to actually take the state off of the list of just five states without such a law – it's up to business leaders and citizens like you to demand state legislators act. What you can do to help: <https://p2a.co/yXuYao8>.

## LEGISLATIVE TOOLS

The second edition of the Indiana Chamber 2019 Legislative Agenda is now online at [www.indianachamber.com/agenda](http://www.indianachamber.com/agenda). This document matches our policy positions (developed by employees from member companies and approved by our board of directors) to specific legislation as it currently stands.

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