

VERY SUCCESSFUL BUT WITH WEIRD TWISTS AND TURNS

By Greg Ellis, vice president of energy and environmental policy

The business community had quite a few wins with good legislation coming to fruition and some bad legislation halted. It was clear that most members of the General Assembly read the Indiana Chamber's legislative agenda and contemplated our members' wants and needs. I would like to thank them for their consideration. Let's look at the highlights of successes and tackle the unusual things that happened during this long session.

Infrastructure Galore: Water, Roads and Utilities

Once again, Sen. Ed Charbonneau (R-Valparaiso) along with Rep. Ed Soliday (R-Valparaiso) took on water resource issues. The results are consistent with the goals of Chamber's agenda and the Indiana Vision 2025 plan, and support has continued from the last two legislative sessions. In addition to water, there were other infrastructure bills that were important to Chamber members.

Senate Bill 4 (Water and Wastewater Utilities and Runoff), authored by Sen. Charbonneau, deals with storm water, wastewater and drinking water. It establishes a Storm Water Management Task Force to study issues related to storm water management systems. The bill provides that the Indiana Finance Authority (IFA) shall coordinate the executive branch activities related to the state's water programs. It requires the IFA to divide Indiana into study areas and to hold annual meetings with the officers and employees of the water and wastewater utilities located in each study area. The bill also requires every water utility to perform an audit of its water distribution system to determine the causes of the water utility's "lost water". The Chamber supported this and the measure received unanimous support in both the Senate and House.

House Bill 1406 (Water Infrastructure Assistance Fund and Program), authored by Rep. Soliday, built upon the foundation of SEA 416 from 2017, which created the Infrastructure Assistance Fund. The bill provides that money from certain sources in the Water Infrastructure Assistance Fund is continuously appropriated for the purposes of the law concerning the Water Infrastructure Assistance Program. This year \$20 million was allocated to the fund. The bill requires the IFA to establish a project prioritization system and project priority list for the purposes of awarding loans, grants and other financial assistance from the Water Infrastructure Assistance Fund. It also requires the IFA to set aside a certain percentage of the money appropriated to the fund designated for small utilities. While the \$20 million allocation sounds like a large sum of money, this fell short of the estimates that were in the Chamber's 2014 water study. It is definitely a step in the right direction, but we still have some work to do.

Senate Bill 517 (Utility Relocation for Road Projects), authored by Sen. Randy Head (R-Logansport), was another bill that dealt with infrastructure issues. The measure provided that if, not later than 90 days after receiving an order from the Indiana Department of Transportation (INDOT) to relocate utility facilities that will interfere with a planned construction project involving the state highway system, a utility has not taken steps to relocate the facilities to the satisfaction of INDOT, INDOT may relocate or cause the relocation of the utility's facilities. The bill provided that if INDOT prevailed in a court action to relocate the facilities, the court shall order the utility to reimburse INDOT court costs and attorney's fees and pay to INDOT a civil penalty of not less than \$20,000. The bill also provided the same authority to the county executive.

The Chamber supported the timely construction and/or repair of roads in Indiana. However, we had concerns that this bill had a very strong potential to interrupt key utility service and drive up costs that would be passed along to the ratepayers and asked to work with Sen. Head on the issues. The bill passed out of the Senate but Sen.

Head pulled the bill during the House Utilities Committee hearing, indicating that he thought it needed more work during the summer months. This one will likely be back next year in an updated version.

Senate Bill 471 (Offenses Involving Critical Infrastructure) was authored by Sen. Eric Koch (R-Bedford). This bill provides that a person who, not having a contractual interest in the property, knowingly or intentionally enters the real property of a critical infrastructure facility without the permission of the owner or an authorized person commits the offense of critical infrastructure facility trespass. It also 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. The Chamber supported this bill as good public policy. It added protections not just for utilities but also industry and businesses – like pharmaceutical companies and manufacturers – that use chemicals in their processes. It will help ensure reliable services and reduce costly shutdowns for all involved.

Senate Bill 472 (Utility Matters) was another bill authored by Sen. Koch. The original version dealt with small or distressed water utilities. It provided that an order affecting rates of service may be entered by the Indiana Utility Regulatory Commission (IURC) without a formal public hearing in the case of any public or municipally owned utility that serves less than 5,000 customers. It also changed the term "distressed utility" to "offered utility" for purposes of provisions regarding acquisition of water or wastewater utilities.

The Chamber supported the bill because it amended existing law and added clarification to issues that have recently been litigated. The clarifications 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 consistent with findings in the Chamber's 2014 water study and the drivers of the Indiana Vision 2025 plan and our long-term position on water resources. It passed out of the Senate by an overwhelming majority.

Now this is where it gets weird. An amendment was introduced in the House Utilities Committee by Rep. Soliday, with no public testimony being allowed, that would have placed a moratorium on the decommissioning of current electricity generation, new generation projects and purchase power agreements. We opposed the amendment as bad public policy that would have likely led to increased costs for all (utilities and ratepayers) and were working the issue hard in the Statehouse hallways. Other groups (not all traditional Chamber allies) including the Indiana Energy Association, the Indiana Industrial Energy Consumers, Indiana Manufacturers Association, Hoosier Environmental Council, Sierra Club and the Citizens Action Coalition also opposed the bill.

Another unlikely ally on energy issues, Rep. Matt Pierce (D-Bloomington), introduced an amendment on the House floor that stripped this language out of the bill. We also got some help from Rep. Ryan Hatfield (D-Evansville) in convincing the House members that it was a bad idea. The amendment passed by a 53-38 vote with many of the Republican majority voting with the Democrats. In the end, the original bill (minus the moratorium language) passed. However, the moratorium wasn't dead yet. There was still some lobbying going on to attempt to get this moratorium language into another bill.

Kevin Brinegar and I were visited by former U.S. EPA Administrator Scott Pruitt to discuss this issue. He shared his thoughts



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on why he thought the moratorium was a good idea, but we weren't convinced. He also gave us some "compromise" language which the Chamber's Energy Policy Committee reviewed and did not support. There were even misleading national press releases indicating that the Chamber was considering a compromise. No moratorium language made it into legislation, which was a win for the Chamber and Hoosier ratepayers.

Energy and Environmental Noteworthy Efforts

Senate Bill 137 (Ban on Sale or Use of Coal Tar Pavement Products), authored by Sen. David Niezgodski (D-South Bend), is a bill that we opposed because it would have banned the sale or use of coal tar pavement products. This was the same bill that was introduced last year and received a committee hearing but did not pass out of committee. This time, it died without getting a committee hearing. This issue may once again surface next year.

House Bill 1470 (Utility Transmission Improvements and Costs) was authored by Rep. Soliday and passed out of both the House and Senate. This bill amends the statute concerning transmission, distribution and storage system improvement charges (TDSIC) for electric and gas utilities. Specifically, it provides that a public utility's required TDSIC plan under the statute must cover a period of at least five years and not more than nine years. The bill requires a utility to update its TDSIC plan at least annually. It specifies that the IURC must approve the TDSIC plan before it can be implemented.

The Chamber supported this bill because the TDSIC plans have been heavily litigated before the IURC, the Indiana Court of Appeals and the Indiana Supreme Court. The bill fixes and clarifies issues with SEA 560-2013 as identified by the courts. The cleaner and streamlined procedure will decrease administrative and legal costs that are put into the utilities' rate base, which are ultimately paid by the ratepayers.

House Bill 1278 (Environmental Matters) was another bill that was a bit unusual. Authored by Rep. Dave Wolkins (R-Warsaw), it started out as the Indiana Department of Environmental Management (IDEM) bill that contained technical corrections to existing law – which the Chamber did not object to and thus supported. Subsequently, Sen. Mark Messmer (R-Jasper) introduced an amendment to the bill that would give IDEM the ability to set permit fees through the rulemaking process in front of the Environmental Rules Board (ERB). Currently, IDEM can only set air program fees by rule, and this would also include the land and water programs. The amendment set some safeguards that the ERB must follow. These safeguards were a result of IDEM working on concerns that the Chamber (and other organizations) brought forward due to the likely impact on its members.

In regard to the amendment, the Chamber would not normally support any fee increase but we supported this because IDEM's budgetary explanations, along with the likelihood of a decrease in staffing, which otherwise would slow down the permitting process significantly. The Chamber's Environmental Policy Committee also vetted the proposal and was supportive of the ability to address fees through the rulemaking process. The safeguards will also prevent

IDEM from using this process as a "cash cow". It was clear that time is money for the business community. There will still be input from the Chamber and its members through the rulemaking process.

Another amendment was introduced by Rep. Soliday in the conference committee process; it was part of the amendment stripped from Senate Bill 472 and establishes the 21st Century Energy Policy Development Task Force. The group is going to consider issues in creating a broad energy policy for Indiana. We supported the task force language in the amendment. The amended bill passed both the House and Senate via the conference committee process.

Miscellaneous Matters: Alcohol, Administrative Law Judges

House Bill 1518 (Alcoholic Matters and Tobacco Certificates), authored by Rep. Ben Smaltz (R-Auburn), should have a positive impact on many businesses in Indiana. This bill is effectively a rewrite of a significant part of Indiana's alcohol code. The bill started out as an 82-page piece of legislation and was paired down to 60 pages as it passed out of both houses. It amends many provisions of the current alcohol code including changes to the escrow provisions, permit transfers, artisan distillers, entertainment complexes, special venues, allowing a manufacturer that has two types of production facilities in one building to serve alcohol from a single bar, plus more changes.

Some Chamber members initially had concerns about the escrow provisions and clerks being licensed. We worked with Sen. Ron Alting (R-Lafayette), who chaired the Senate Public Policy Committee, to get these concerns addressed. He noted that the bill has a significant impact on economic development and jobs. We agree but still more work is needed in this area. There was still no appetite for legislation that would make it possible for pharmacies, grocery stores and convenience stores to sell cold beer.

House Bill 1223 (Administrative Law Judges), authored by Rep. Greg Steuerwald (R-Avon), changes how appeals of agency actions will be handled beginning July 1, 2020. The bill establishes a pool of administrative law judges (ALJs) within the Office of Administrative Law Proceedings (OALP) as part of the State Personnel Department to hear certain administrative proceedings determining the legal rights, duties or privileges of a party after an opportunity for an evidentiary hearing.

Currently, most ALJs are housed within the agencies for which they hear appeals of agency actions. The Chamber was not supportive of the bill at the beginning of the legislative session because there were concerns over rights-of-appeal or administrative processes guided by complex federal and/or state law which requires specific knowledge or expertise. Representative Steuerwald met with us on multiple occasions to discuss and address these concerns. He drafted a list of some excepted agencies over whose administrative proceedings the ALJs from OALP do not preside. In the end, the Chamber supported the legislation and it passed both houses. Representative Steuerwald should be recognized for his willingness to address the concerns of Chamber members.