



April 17, 2015

IACT *Still* Needs Your Help on Annexation Bill!

Second and third reading deadlines were this week in both the House and Senate and conference committees will be in full swing next week. A conference committee meeting on the budget bill, HB 1001, was held this morning. The big issue on the table now for IACT is the annexation bill, SB 330. Senator Boots has filed a dissent on the bill meaning it will go to conference committee. We are actively working to gain support from the business community and legislators for the economic development protection provision which was added in the House allowing cities and towns to continue to be able to go to court to debate whether the annexation should occur or not when an economic development project is at stake. Read more about SB 330 and other bills below. PLEASE talk to your legislators about the importance of annexation and smart growth!

It's Not Over Yet! Keep Up the Phone Calls & Emails on Annexation.

Tell Legislators the Economic Development Protection Provision MUST Stay!

Thanks to Your Outreach Efforts, Annexation Bill Amended in the House to Include IACT-Supported Language! Final Few Weeks are Critical

SB 330 – Annexation (Boots, R-Crawfordsville; Negele, R-Attica)

On Monday, Rep. Randy Truitt (R-Lafayette) successfully offered Amendment #3 on 2nd Reading to SB 330 that included language supported by IACT. Most importantly, the amendment included an Economic Development Protection Provision, so that a few landowners are not able to stop an economic development project without due process. We believe this provision will be debated in the final stages of session. Please let your legislators know the Economic Development Protection is important and MUST stay in the bill!

Both the House and Senate versions of SB 330 make annexation more difficult and remonstrance easier. However, there are major differences in the approaches. While SB 330 as passed by the House is not perfect, we do appreciate the approach House leaders have taken to consider all stakeholder input and work toward a more balanced bill. The House-version of SB 330 does the following: requires six months of upfront community outreach by the municipality before an annexation ordinance may be adopted; requires more detailed information in the fiscal plans; makes the agricultural exemption under section 4.1 of the annexation statute automatic depending on “use” versus zoning; requires remonstrance petitions be filed with the county auditor instead of with the courts; limits remonstrance waivers going forward to 25 years or the life of the municipal bond for the project (whichever is less); requires the municipality to assume county debt or make payments to the county in certain circumstances; lowers the threshold for remonstrance signatures needed to go to court from 65% (current) of landowners signatures to 51% of landowner signatures; and removes the court – stops an annexation altogether – if at least 65% of landowners sign a remonstrance petition. IACT opposes removing the courts from the annexation process at the 65% remonstrance threshold. However, the addition of the Economic Development Protection Provision at least ensures that even if there are remonstrators amounting to 65% (which depending on the circumstances could be only two or three property owners), when there is an economic development project

at stake that needs municipal water or sewer services in order to happen, the annexation debate can go to court.

SB 330 passed the House 72-22 on Wednesday. Sen. Boots filed a dissent the next day, which sends SB 330 to conference committee, where two members from the House and two members from the Senate will come together and attempt to hash out a final product in the form of a Conference Committee Report. We expect the conference committee to meet next week. Your phone calls, text messages and emails to legislators encouraging them to keep the Economic Development Protection Provision in SB 330 are critical.

IACT Position: Economic Development Protection Provision in SB 330 Must Stay

Bill That Once Had Volunteer Firefighter & Binding Review Language Died in the Senate; IACT Watching to See if Language is Amended into Another Bill in Conference Committee

HB 1433 Volunteer Firefighters Serving in Elected Office (Mahan, R-Hartford City; Head, R-Logansport)

The bill that once would have would have allowed volunteer firefighters to serve on the city/town council or as the executive, with the caveat that the city/town budget would be subject to **binding county council review died this week in the Senate when Sen. Head failed to call it for second reading**. The issue of binding review could come back this session during conference committee or as an amendment to another bill. Please watch your emails for an alert if your assistance is needed. Requiring binding county council review of municipal budgets is a major shift in public policy for our state – subjecting municipal budgets to county review diminishes the role of city/town council members, who are elected by the city and town residents to make decisions for the municipality with the best interest of the city and town in mind. **Thank you to those who made phone calls and sent emails. Your efforts were successful and very much appreciated!**

IACT Position: Oppose Binding County Council Review of Municipal Budgets; Support Existing Conflict of Interest Law

Dark Store Assessment Language Needs More Work

SB 436 – State and Local Taxation (Hershman, R-Buck Creek, Brown, R-Crawfordsville)

SB 436 passed the House amended, and a dissent is expected which will send the bill to Conference Committee. The “big box” store assessment language has been hotly debated since Sen. Hershman amended the bill a few months ago to address the “Dark Store” assessment issue that was sparked last December when the State Board of Tax Review (IBTR) ruled that an Indianapolis Meijer store, one of the most successful in the state, should have been assessed at a value of \$30 per square foot versus \$83 per square foot. This decision cost Marion County \$2.4 M in refund for the nine-year period challenged spanning 2002-2012. (Read news reports from a Michigan article and by the IBJ.) Meijer used a controversial method known as the “Dark Store Theory” to challenge its assessed value, using a closed Lowe’s and vacant Walmart’s in other counties as comps to determine its value. Unfortunately, when the IBTR is deciding a case, it can only select the taxpayers’ appraisal or the assessor’s appraisal, no in between. Further, it cannot take into consideration the assessment method used for determining valuation that is prescribed to our county assessors.

The question at hand in SB 436 is how to define the assessment process clearly for special purpose properties, so that this “dark store theory” is not applied to the 17,000 other parcels in the state and thus drastically cutting property tax revenues for local units. House Republicans are supporting Meijer’s language that allows for the use of “dark stores” as comps. The language also is not retroactive, which puts millions of dollars of assessment appeal cases in jeopardy for local units. AIC pushed amendment #8 offered by Rep. Prior on second reading. Unfortunately, the amendment died 38-56. However, many acknowledge there is more work to be done!

If you speak with your legislators on this issue, it is important to encourage: 1) Action this session. We need a fix now, or our assessed values on these special use properties could be slashed in half, and 2) Language must clarify the assessment so that using a vacant store comp is not permitted. Many thanks to Sen. Hershman for his leadership on this issue!

IACT Position: More Work Needed

Wireless Tower Bill Passes Senate 50-0 with Amendments Requested by Cities and Towns

HB 1318 – Wireless Communications (Koch, R-Bedford; Hershman, R-Buck Creek)

We appreciate the collaborative approach of AT&T, Rep. Koch and Sen. Jim Merritt (R-Indianapolis) in working on this bill that was amended in response to many city and town requests. The bill does the following: 1) Speeds up the time allowed for local units to review and approve or deny a new wireless tower construction application; 2) provides for consolidated applications for multiple collocation requests and for small cell networks; and 3) provides a framework for uniform statewide applications for new towers, substantial modifications and collocation requests. The bill outlines what is considered a “complete” application. However, it leaves in place local discretion for what conditions to apply when approving or denying an application. This was a critical point for IACT. The bill does place restrictions on locals adopting fall zone requirements that exceed the engineering requirements. However, local units may still adopt setback requirements, which was also a critical point for IACT. Another major change in this bill is the addition of “communication service providers” (CSP) to the definition of public utilities under 8-1-2-1(a). Most CSP’s are public utilities (or contract with public utilities) today. It will be important for all municipalities to evaluate their ordinances managing public utilities in ROWs as allowed by 8-1-2-101, and to examine their ordinances regulating wireless towers. IACT successfully advocated for a delay in effective date of the bill to January 1, 2016. HB 1318 passed the Senate 50-0 and awaits action by Rep. Koch, the bill author who can concur or dissent with the Senate’s changes.

IACT Position: Mostly Supportive

Common Construction Wage Elimination Held in Committee

HB 1019 – Common Construction Wage (Torr, R-Carmel; Yoder, R-Middlebury)

The House passed the motion to concur with the changes made in the Senate on April 16 with a final vote of 54-40. This bill will now go to the Governor’s office for his signature to sign it into law. This bill repeals the common construction wage for public works projects that are awarded after July 1, 2015 and worth more than \$350,000. It prohibits a public agency from establishing or requiring a wage scale or wage schedule for a public works project awarded by the public agency. It specifies that a public agency may not enter into or renew a contract for a public works project with a contractor unless the contract contains provisions that: (1) Requires the contractor to enroll in and verify the work eligibility status of all newly hired employees through the E-verify program; (2) The contractor is not required to use the E-verify program if it no longer exists; and (3) Requires a contractor to sign an affidavit affirming the contractor does not knowingly employ an authorized alien. The bill also specifies that all public works projects (excluding public-private design-build and construction manager as constructor agreements) must be structured in four contractor tiers among other new requirements. After June 30, 2015, a contractor who is awarded a public works contract by a political subdivision with an estimated cost of at least \$150,000 must have an employee drug-testing program. It also requires the Indiana Department of Labor to submit to the General Assembly not later than July 1, 2021, a report concerning the effects of the repeal of the common construction wage statute. For public works projects awarded after June 30, 2016, a public agency that reasonably suspects a contractor has violated certain requirements shall refer certain violations to the appropriate agency for investigation or require the contractor to remedy certain violations not later than 30 days after the agency notifies the contractor of the violation. If the contractor fails to remedy the violation, the bill

requires the public agency to find the contractor to be not responsible for a period based on the severity of the violation but for not more than 48 months.

IACT Position: Neutral

Performance Bond Bill Nears Concurrence

HB 1508 – Performance Bonds of Land Developers (Rep. VanNatter, R-Kokomo; Sen. Holdman, R-Markle)

The author of HB 1508 filed a motion to concur to the changes made in the Senate. Once the motion to concur is adopted by the full House, the bill will travel to the Governor's office for his signature to complete the final stage of the legislative process. Under this bill, a local unit may not adopt an ordinance to require a land developer of Class 1 or Class 2 structures to obtain a performance bond before the date on which the land developer records an approved secondary plat. However, locals can still require a performance bond before an approved secondary plat is recorded if the area under development is within the existing right-of-way or related to erosion control. It also limits a maintenance bond to three years for a land developer of Class 1 or Class 2 structures. It authorizes a unit of local government to require the land developer, as a condition precedent to recording the secondary plat, to obtain a performance bond or other surety for incomplete or unfinished streets, sanitary piping, storm water piping systems, water mains, sidewalks and ornamental landscaping in common areas and erosion control. It also specifies that an ordinance requiring a land developer to obtain a performance bond or other surety must include a provision for the release of the performance bond or other surety upon completion to the satisfaction of the local unit and the partial release of the performance bond or other surety in accordance with a written agreement by the local unit and the land developer.

IACT Position: Neutral

Food and Beverage Taxing Authority Headed to Conference Committee

HB 1044 – Food and Beverage Taxes (Rep. Morrison, R-Terre Haute; Sen. Boots, R-Crawfordsville)

This bill authorizes Rockville, Greenwood and Orange County to adopt a Food and Beverage Tax (FBT) and provides that the tax rate may not exceed 1%. It also imposes a FBT on transactions that occur in a travel plaza located next to the Indiana Toll Road and provides the tax rate may not exceed 1%. The travel plazas are located in Portage, Rolling Prairie, Elkhart, Howe and Fremont. It specifies that FBT revenue from the plazas shall be distributed to the Northern Indiana Tourism Development Commission (commission). The bill also creates the Indiana Toll Road Visitor Services Council (council) and requires the commission to submit a budget to the council for review and approval. The author of HB 1044 has dissented on the changes made in the Senate but a conference committee is yet to be scheduled.

IACT Position: Support FBT Authority

Gaming Bill Awaiting a Conference Committee Hearing

HB 1540 – Various Gaming Matters (Demondy, R-LaPorte; Alting, R-Lafayette)

HB 1540 specifies the process for entering into a tribal-state compact concerning Indian gaming, adds several tax related provisions for the French Lick casino, deletes the capital investment tax credit, allows live table games at racinos beginning in 2021, caps the number of gambling games at a racino to 2,200 and adds additional topics for a summer study committee related to the extent local governments rely on revenue generated from the casinos and racinos. The information gathered during the summer study committee will be very important to how Indiana responds to a trend of declining casino and racino revenue being sent to the state. The author of HB 1540 has dissented on the changes made in the Senate but a conference committee is yet to be scheduled. IACT will continue to closely monitor any changes made to this bill.

IACT Position: Closely Watching

Bill that Simplifies Local Option Income Taxes Will Go to Conference Committee

HB 1485 Local Option Income Taxes (Thompson, R-Lizton; Hershman, R-Buck Creek)

HB 1485 is head to conference committee as Representative Thompson filed a dissent motion due to the changes made to the bill in the Senate. In an effort to simply our the local income tax statute, this bill calls for a transition of CAGIT, COIT, CEDIT and various other local income taxes for special purposes to be renamed "Local Income Taxes" with three different rate components. The transition would occur in 2017 and all distributions for the current income taxes would remain the same. We are continuing to evaluate the complexities of the bill and if the bill passes, more tweaks may be necessary next session.

IACT Position: Support

PSAP Bill is On Its Way to the Governor

HB 1475 Statewide 911 System (Karickhoff, R-Kokomo; Hershman, R-Buck Creek)

Yesterday, the House concurred on the Senate changes to HB 1475 by a 72-15 vote. The bill uncouples the public safety LOIT from the property tax relief/levy freeze LOIT (an IACT initiative). It extends the sunset date for the 911 fee to be collected on telephones until 2020 and raises the fee on telephones to \$1.00 for all types of phones. The bill provides that counties and cities and towns may petition the Department of Local Government Finance for levy adjustments following PSAP consolidation. The bill requires 911 fee distribution to counties to remain at the 2014 levels going forward from 2016. The bill also provides that a county income tax council or county council may adopt a resolution to distribute up to 100% of the Public Safety LOIT tax revenue to a PSAP that is part of the statewide 911 system. It also clarifies this provision to say that 100% can be directed to the PSAP only for a *new* Public Safety LOIT that is adopted (therefore not affecting current distributions). For those counties that have already adopted the Public Safety LOIT, only an additional rate adopted can be fully dedicated to the PSAP.

IACT Position: Support (Uncoupling the Public Safety LOIT is an IACT Initiative)

Updated State Revenue Forecast Lowers Expected Revenue

HB 1001 – Biennial Budget (Rep. T. Brown, R-Crawfordsville; Sen. Kenley, R-Noblesville)

The final revenue forecast for Indiana lowered expected revenue by about \$213 M over the next two years. This information will likely have an impact on the General Assembly as they discuss the biennial budget, which must be passed by April 29. The top priority for the General Assembly remains increasing funding for education. The House budget increased education funding by \$469 M over the next two years, the Senate budget increased education funding by \$466 M over the next two years and the Governor's budget increased education funding by \$200 M over the next two years. The House and Senate funded the Regional Cities Initiative with \$20 M over the next two years while the Governor's budget called for \$84 M over the next two years. Funding for the Public Mass Transportation Fund (PMTF), which has remained stagnant at \$42.6 M the last seven years, was cut by 3% by the Senate and Governor's budget while the House slightly increased funding by 1% in 2016 and about 8% in 2017. Advocates of mass transit are asking to increase PMTF funding from \$42.6 M to \$60 M per year. The increase to local road funding from the 2013 budget remains in the Senate and Governor's budget and the House gives a slight bump in funding starting in 2017. The General Assembly and Governor appear most focused on state highways as all three budget proposals appropriate \$400 M over the next years to the Major Moves Trust Fund. All three budgets also contain a provision that increases the fees for audits charged to local units by the State Board of Accounts from \$45 a day to \$175 a day. The Senate version of the budget, which is

the most recent version, also allows 50% of the tangible property owned by certain for-profit hospitals to be exempt from property taxes if the property is used in the operation of the hospital. A conference committee to negotiate the final budget is scheduled this morning. IACT will testify in support of restoring the Governor's \$84 M to the Regional Cities Initiative, an increase in local road funding and to the PMTF among other topics as time allows.

IACT Position: Watching

2015 Legislative Dates & Deadlines

Tuesday, April 14

2nd Read deadline in second house

Wednesday, April 15

3rd Reading deadline in second house and concurrence deadline for conference committee reports

Wednesday, April 29

Last day of session