

## ACEC Indiana Government Affairs Weekly Update for January 15, 2021

The second week of the Indiana General Assembly saw a deluge of introduced bills, moving the number to nearly 1000. The Governor announced his proposed budget which allocates more funding for K-12 education without specifically directing it to teachers' salaries and for broadband development in underserved sections of the state. The Senate has moved quickly on a bill to provide immunity from COVID 19 liability for individuals and businesses. Several introduced bills are aimed at limiting the Governor's exercise of emergency powers during a prolonged emergency without legislative input. The State House will be closed Monday in recognition of Martin Luther King Day, and the remainder of the week due to concerns of civil unrest.

ACEC Indiana's [bill tracking list](#) is here to view the bills discussed below and all the others that we are monitoring.

### **ACEC INDIANA'S BILL**

**SB 304, Indemnity Agreements In Public Works Contracts**, authored by Sen. Mark Messmer (R - Jasper) – **SUPPORT!** This bill was introduced on behalf of ACEC Indiana and AIA Indiana.

**Background:** In 2019, the Indiana General Assembly passed SEA 230 (PL 65-2019) to provide fairness to Design Professionals when they have done nothing wrong in the performance of their services. The law (IC 26-2-5-4) applied to all provisions in a contract between a design professional (i.e. Professional Engineer, Architect) and its client (public or private) that imposed a contractual "duty to defend" the client prior to any determination of negligence by the design professional. This law passed the Senate 38-9 on a bipartisan basis.

Unlike contractors, design professionals are unable to purchase general liability insurance that provides coverage for contractually assigned indemnification or duty to defend. The insurance product doesn't exist in the marketplace. Design professionals' professional liability insurance covers only liability resulting from their own negligent acts or omissions.

**Why SB 304 is needed now:** Despite the clear intention that PL 65-2019 was intended to cover all contracts between a design professional and client, contracts awarded by IDOA for Professional Services (i.e. Engineering and Architectural) still mandate a "duty to defend" the agency. Therefore, the design professional would still be required to pay for the agency's defense cost up front/out of pocket through contractual mandate.

It has been argued it is unclear that PL 65-2019 applies to Public Works contracts because it is not specifically contained in the respective statutes governing State and Local contracts. In light of the State's immunity, IC 26-2-5-4 clearly doesn't shift indemnification or duty to defend to the state. That result was never contemplated. The provision would apply to state contracts that seek to shift indemnification and/or duty to defend to the design professional from an entity that is immune from tort liability. Such provisions are boilerplate language in State contracts.

**What SB 304 does:** To make it clear that the law does apply to Public Works contracts, SB 304 links the new law contained in IC 26 to the Public Works statutes for contracts awarded Professional Design Services in State contracts. [Click here](#) to view a talking points diagram of SB 304.

Please contact your state senator and ask them to support SB 304.

**\*State Senate Phone - 800/382-9467**

**\*Email/Find Your Legislator - <http://iga.in.gov/legislative/find-legislators/>**

### **NEW PRIORITY BILLS THIS WEEK**

**HB 1234 Fair & Open Competition in Public Works** authored by Rep. Jerry Torr (R-Carmel). Concerned about its impact on local clients ability to pre-qualify contractors for projects.

**HB 1436 Administrative Proceedings and State Agencies**, authored by Rep. Jeff Thompson (R-Lizton.) Concerned about impact to Construction in Floodway and permitting authority of IDNR.

**HB 1465 Highway Work Zone**, authored by Rep. Jim Pressel (R-Rolling Prairie) – Support. Creates a “pilot” program to improve work zone safety. This bill was introduced on behalf of ICI

**HB 1466 Performance Bonding of Developers**, authored by Rep. Jim Pressel (R-Rolling Prairie.) Concerned about its impact on timely completion of infrastructure and erosion control.

**SB 348 Wastewater Task Force**, authored by Senator Eric Koch (R-Bedford) – Support. Establishes task force to review investment and service to underserved areas.

**SB 389 Repeals State Regulated Wetlands Law**, authored by Senator Chris Garten (R-Charlestown.) Evaluating impact based on current federal and state regulatory programs.

### **UPDATE ON PRIORITY BILLS FROM LAST WEEK’S REPORT:**

**SB 207 Highway Finances/MVH Formula-OPPOSED** by BIC. Authored by Senator Doriot (R-Syracuse), passed Senate Appropriations Committee 11-2. The bill increases the distribution formula from 50%/50% for capital projects vs. operations to 60% operations/40% capital projects, under certain conditions (i.e. Wheel Tax adoption) for two-years. Proponents are attempting to remove the requirement to have Wheel Tax in place as the bill advances to the full Senate. [See talking points here.](#)

**HB 1116 Pipe Materials Mandate-OPPOSED by ACEC Indiana.** Authored by Rep. Miller (R-Elkhart) who also serves as the Chairman of the [Government & Regulatory Reform Committee](#) where the bill is assigned for action. All indication is that it will receive a hearing, so help is needed now to share opposition to it with the other legislators who serve on the House Government & Regulatory Reform committee. [See talking points here.](#) Quick summary: The bill seeks to legislate the criteria engineers use in determining the most appropriate materials to be used on a project. This same bill was also considered in previous sessions with language requiring the consideration of a specific type of piping, PVC. ACEC Indiana opposes this measure because it imposes arbitrary and unnecessary specification requirements, seeks to solve a non-existent problem, and is a thinly veiled effort to promote a product. The bill would set a terrible precedent if it were to pass. HB 1116 is being pushed by Indiana Builders Association (home builders) and the American Chemistry Council.

Look for update next week which will likely include several more bills of interest to your firm.