

# LONG TIME COMING

## Major Public Policies Finally Have Their Day

By Rebecca Patrick

Persistence pays off – even at the Indiana General Assembly.

Impactful legislation, in fact, rarely makes it across the finish line in short order. And some of these measures take many years and, occasionally, decades to finally pass the Legislature.

In 2015, not one or two but five of these long-sought public policies benefitting the business community became law.

### Common construction wage repeal

**What's new:** Effective July of this year, a repeal of the common construction wage (CCW) statute for state and local public construction projects.

**Why it matters:** The cost of public construction in Indiana has traditionally been much higher than the national average.

“One reason was that the majority of wage scales adopted have reflected super or maximum wages instead of what is commonly paid in the respective county. CCW costs taxpayers hundreds of millions of dollars in excess and unnecessary tax burdens,” states Indiana Chamber President and CEO Kevin Brinegar.

Paul Thrift, president of Thompson Thrift Development, says while his Terre Haute headquartered-company hasn't been engaged in bidding for common construction projects recently, the process has been very much on his radar screen.

“As an Indiana taxpayer and citizen, I was concerned. I'm happy that Indiana has made this move. We are putting the taxpayers in the same competitive advantage as the private businesses are – and they should be. I'm pleased to see us using our tax dollars efficiently instead of setting up these artificial hurdles and barriers that end up costing the taxpayers more.”

Thrift is especially happy to see the free market system prevail.

“The repeal of this law introduces a truly



Interstate 69 is making good progress: Section four, near Crane NSWC (shown), is complete; underway now is section five in the Bloomington area. Thanks to 2015 legislation, all logical routes for section six up to Indianapolis can be considered (*Indiana Department of Transportation photo*).

competitive environment and allows the free market to set the labor rates, as it should. It takes away the artificial requirement, which was limiting participation from an array of contractors – which simply worked to drive the costs up for public works projects. So we all paid for that through our tax dollars.

“There is no doubt that the taxpayer will see the benefit in reduced costs and it will also open it up to the free market to establish and determine wages. That's what our free market is all about; we either trust it or we don't. You'll see the free market introduced back into the public works projects, and then you'll see efficiency and productivity increase and costs go down.”

### Best route for Interstate 69

**What's new:** Removal of a questionable provision in state statute that prohibited a section of Interstate 69 from being built in Perry Township, Marion County. This means all options for the final segment of I-69 now will be considered by the Indiana Department of Transportation (INDOT).

**Why it matters:** “Costly litigation was on the horizon. Now a court challenge over the prohibition is avoided, and the final stretch of highway, section six, will be selected based on an empirical basis instead of a political one,” explains Cam Carter, Indiana Chamber vice president of economic development and federal relations.

“Interstate 69 has been a national priority for more than 20 years and deserves to be

completed in Indiana in the best way possible.”

Bill Barrett, partner at Williams Barrett & Wilkowski, LLP in Greenwood, testified during the legislative session in favor of this repeal on behalf of virtually all of the mayors, towns and local governments in Johnson County – which were united on this issue.

“(Without this repeal) INDOT's hands would have been tied in regards to what we all have to acknowledge is an apparently logical route. It may, in the end, turn out to be the best route from an environmental impact, cost and commercial development aspect.”

Barrett hesitates, however, at identifying the Perry Township route as the favorite.

“I really don't know. I'm not in a position to guess what INDOT is going to do or how they will analyze it.

“Let's me put it this way: If you take the idea that we all learned in grade school that the shortest distance between two points is a straight line – if that was the only consideration, then this would be the route,” he reasons.

“But that's not the only consideration. Still, it's good to have that option available. Cost is certainly part of it and cost does relate to miles that have to be paved, as well as the type of terrain that has to be paved.”

Other routes connecting the section five end point near Martinsville with Indianapolis would be bigger builds and projects, Barrett mentions – including the State Road 67 option north from Martinsville that would require a bridge over the White River that conforms with interstate standards.



“This (elimination) is one more piece that shows that we are a pro-business taxing state. It’s one more item from an economic development standpoint to help companies grow and expand.”

Scott Wilson  
Treasurer and Vice President of Tax  
Roche Diagnostics Operations

As of early summer, INDOT reported it was considering 14 possible routes. The department is holding various public meetings on the matter in the impacted communities to gauge public sentiment.

According to Carter, “This process will take a while. The options will keep getting narrowed down until there is only one left. That’s not expected to happen until 2017.”

Barrett remains optimistic. “When it’s completed, I-69 has the potential to be an engine of growth and development throughout the state and certainly throughout the region,” he stresses.

“This legislation has removed a barrier to that possibility and made it more likely that will in fact happen.”

### Elimination of the ‘throwback rule’

**What’s new:** Hoosier companies that conduct business in places that do not tax the income they make there are no longer subject to having that out-of-state income “thrown back” and taxed in Indiana, as of January 2016.

**Why it matters:** “Elimination of this rule makes Indiana’s system fairer to the taxpayer. It will promote economic development and makes tax compliance easier and less contentious,” asserts Bill Waltz, Indiana Chamber vice president of taxation and public finance.

“This also helps level the playing field among Indiana’s neighbors. Illinois was the only other state in the Midwest that had this rule, so Indiana stood out in a negative way.”

The “throwback rule” has been a bone of contention for many in the Hoosier business community. Among them: Roche Diagnostics Operations, located in Indianapolis.

“This law always seemed to punish those that were expanding and growing outside of their borders and exporting,” shares Scott Wilson, the company’s treasurer and vice president of tax.

“We hire people to do the manufacturing in Indiana. We hire people to do the R&D in Indiana. We hire people to handle just about everything in Indiana. But the customer base in Indiana is not large enough for us, so we look outside our state borders and outside the U.S.

“We export a significant amount of product, and Indiana would tax those exports as if they were sold to customers in Indiana. So we always felt that gave us an unduly high tax burden.”

Wilson paints a picture of the impact for Hoosier companies. “It’s not uncommon for taxpayers to have a three, four or five-fold increase in their state tax liability compared to their product sales in the state – because you are selling more product outside of the state than you are in Indiana.”

He determines, “This (elimination) is one more piece that shows that we are a pro-business taxing state. It’s one more item from an economic development standpoint to help companies grow and expand.”

### Wage payment and wage assignment reform

**What’s new:** The court now has discretion in the penalties for

wage payment violations and can consider whether or not an employer was acting in good faith when withholding wages. On the wage assignment side, several items were added to the list of what an employer may deduct from an employee’s wages – benefitting both the employer and the employee.

**Why it matters:** In simple terms, a well-intentioned wage payment system was being abused.

“Originally the statute was enacted to make it such that employees who were denied their wages had a mechanism for challenging the non-payment. Therefore the attorney’s fee provision and the treble damages seemed to create the proper balance in giving an employee the opportunity to pursue a legal remedy,” clarifies David Swider, partner at Bose McKinney & Evans in Indianapolis, who represents employers throughout the country in labor and employment law matters.

“Wages had to be paid within 10 days of the date earned, or these damages would start accruing daily until you got to three times the amount due plus attorney fees.

“Over time, attorneys for plaintiffs or employees started to use the statute as a sword rather than a shield – any time any issue arose,” he continues.

“They were using it as opportunities to get treble damages and attorney’s fees in instances in which the statute really wasn’t intended to apply. It might be the late payment of vacation pay. It might be questions regarding whether amounts were due or not. It might even be invalid wage assignments.”

The abuse was a recurrent theme, Swider emphasizes. “There were lawyers who really were doing almost nothing other than bringing wage payment claims. We always had several of these cases going on at one time or another – and we were far from alone.”

Some plaintiff lawyers are concerned the reform will make it harder to bring claims, he notes. “But they are still going to get the attorney’s fees; it just will reduce the damages absent of the bad faith.”

Many of the technically legitimate wage payment cases, Swider says, were arising out of the wage assignment part of the equation when employers were deducting for things that legally they weren’t allowed to, regardless if the employee had agreed to it.

Advanced payroll or vacation pay, reimbursement for uniforms or equipment, as well as loaning money for education, were items previously not listed in the law. All of these things are now covered and eligible for deduction.

“We’ve been fighting changes in the wage payment statute for a good many years – I would say at least 20 – so it’s a real accomplishment

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Bill Waltz (left) of the Indiana Chamber touts benefits for many companies resulting from the throwback rule elimination and business personal property tax relief for smaller organizations.

## Public Policies

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*Elaine Bedel  
CEO and president  
Bedel Financial Consulting*

to finally make progress,” Swider concludes. “And it’s done in a balanced way. I don’t think this is necessarily a cause for employers to celebrate too much, but it does bring a rule of reason to the application of the statute that wasn’t there before.”

### Business personal property tax relief

**What’s new:** Starting in 2016, small businesses that own less than \$20,000 in machinery and equipment (based on acquisition

costs) are exempt from having to file and pay the business personal property tax.

**Why it matters:** Most Midwest states do not tax business machinery and equipment at all. Indiana was among only a handful of states that taxed business personal property at the highest rates.

“Our state has been, and always will be, known for its manufacturing production, and 80% of Hoosier manufacturers employ less than 50 people. Therefore, it’s highly counterproductive taxing the very machinery and equipment – drill presses, forklifts, tractors, etc. – that allow organizations of all sizes and their employees to be more productive and successful,” Brinegar says.

Elaine Bedel, CEO and president of Bedel Financial Consulting, says that while her Indianapolis service firm won’t see as much of an impact as those manufacturing companies or others that carry more equipment (up to the \$20,000 threshold), every bit of tax break is welcome.

“These dollars can go somewhere else now. (In our case), they can be used maybe for software that will better serve our clients. So it can go toward client services, employee benefits or other places.”

Adds Brinegar, “A great many businesses also paid more to professionals to assist them in their return preparation than the small amount of taxes – often under \$100 or \$50 – that the state collected from them.”

**RESOURCES:** Bill Barrett, Williams, Barrett & Wilkowski, at [www.wbwlawyers.com](http://www.wbwlawyers.com) | Elaine Bedel, Bedel Financial Consulting, at [www.bedelfinancial.com](http://www.bedelfinancial.com) | David Swider, Bose McKinney & Evans, at [www.boselaw.com](http://www.boselaw.com) | Paul Thrift, Thompson Thrift Development, at [www.thompsonthrift.com](http://www.thompsonthrift.com) | Scott Wilson, Roche Diagnostics Operations, at [www.usdiagnostics.roche.com](http://www.usdiagnostics.roche.com) | Complete *Final Legislative Report* at [www.indianachamber.com/go2/FinalLegReport2015](http://www.indianachamber.com/go2/FinalLegReport2015)



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