

# Modern Indiana Legislature

## The Good, the Bad and the Political

**W**hile this may have been the short legislative session, it certainly wasn't lacking in drama. Between the intense property tax debate early on and the standoffs on the House floor resulting from the Internet vote ploy on full-day kindergarten and same-sex marriage question, the 2004 Indiana General Assembly was put under an intense public microscope.

At times, the process and procedures seemed muddled as partisan politics came to the forefront – bringing with it several fundamental questions. Is the Legislature running as effectively as possible? Is there any way to lessen the partisanship? How has the Legislature evolved over the years? What positive changes should be made for the common good?

Discussing these important issues are:

### Participants

**Phillip Bainbridge – Speaker of the Indiana House of Representatives from 1974-1976 and current partner at Baker & Daniels, Indianapolis**

**Kevin Brinegar – president of Indiana Chamber of Commerce, Indianapolis**

**Rep. Brian Hasler – Indiana state representative, Evansville**

**Rep. Sue Scholer – Indiana state representative, Lafayette**

### Politics as usual

Today, the political dynamic seems an intrinsic part of any legislative session. That wasn't always the case, says Bainbridge.

“Other than election issues and laws, things went fairly smoothly. There was not much acrimony,” Bainbridge recalls. “Those that saw this session and the immediate previous sessions saw much more political activity. For some reason, many legislators now feel that the stakes have increased.”

Hasler, who leaves office in January after eight years, has witnessed firsthand the “increasing polarization” in the General Assembly. “It's really unfortunate because most of the issues we deal with are not political in nature. Yet, we continue to see a more political environment. I don't blame that on either party ... but an effort needs to be made to break down some of these long-standing disputes that exist and allow legislators to do their job.”

“We seem to have people [in the Legislature] now that want their issues their way,” offers Scholer, who, after 14 years of legislative duty, is also set to retire. “And to some extent, we have lost this concept that government is there to do what's best for the common good for all, as opposed to getting a solution that's satisfactory to one aspect of the problem.”

A major trigger for all the recent political friction is the closeness of margins in the House, Scholer contends. “When you have races that are won and lost by less than 200 votes every time we have an election cycle, it makes the focus be on some of the things that might change those key votes to make a difference.”

Adds Brinegar, “I think this year was a classic example of that effect, where you had the narrowest of margins, coupled with a Republican party that is excited about its gubernatorial candidate.

“On top of that, all of this is happening at a point in time when there are a lot of problems financially for the state, as well as problems being caused by the impact of the property reassessment and the state not having any money for the Legislature to buy its way out of that problem. Together, it makes for a lot of consternation and hand-wringing,” he describes.

All of this, however, doesn't necessarily preclude progress and significant legislation from being enacted. “The end result matters as much as the process. We've seen a lot of good legislation come out of this sloppy process,” Bainbridge states.

**By Rebecca Patrick**

Scholer concurs, "One thing I don't think people today stop to think about is the fact that this is how our government was designed; it's supposed to be a messy process, particularly in the House of Representatives.

"We are supposed to argue and hash out the issues and that's not bad. I think that's the perception that's changed – that if you have strong disagreement, it's not good, as opposed to the fact that it reflects where we are as a society, and we simply need to work it out," she says.

Still, Hasler would like to see some restraint exercised by both parties. "I think to some extent this has to happen in order to try to reduce the tension on the political wedge issues. That said, it's not an easy thing to accomplish, but I think that's certainly the quickest way we could deal with some of the concerns that are breaking down the process."

For his part, Bainbridge doesn't view the political fray as particularly troublesome. "We have a strong two-party system. As long as we do, we're going to have those kinds of issues and discussions, which I think is good.

"As far as an answer, a way of resolving or a way of eliminating the political aspect, I don't know if that should even be our goal," Bainbridge asserts.

### Media impact, public perception

Another stark contrast of the past and present Indiana Legislature is the media, which today can play a powerful role by what they cover and how they cover it.

"Twenty years ago when I started working for the Legislative Services Agency (LSA), you had reporters who had been in the Statehouse for years and years. They knew the people, the process, the issues and bills," Brinegar explains.

"Now, it just seems like there's this constant churning of reporters, with a few exceptions, so the depth of the work done by the media has gotten shallower and shallower."

Consequently, the quick-hitting media of the 21st century tends to gravitate to issues that are easy to understand, Brinegar maintains. "These issues (e.g. same-sex marriages) are likely more emotionally charged, but, in the grand scheme of things, not necessarily as important as House Bill 1365 (a variety of critical tax measures) for example."

"True," says Scholer. "The difference really is that bill [HB 1365] is much more difficult to explain or have the public relate to. The same-sex marriage issue, though, is in the courts and on TV – people are concerned about it."

All discussion participants point to the consolidation of media as also having greatly affected the type of coverage seen today.

"When we used to have *The Indianapolis Star* and *The Indianapolis News*, *The Evansville Courier* and *The Evansville Press*, the newspapers actually competed for a story and tried to come up with different perspectives and did more in-depth



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Baker & Daniels

analysis – we've lost that with the loss of newspapers," Hasler asserts.

Stemming in part from the current media take on the Legislature is the public sentiment that the legislative process isn't as open and easily accessible to them as it should be.

Scholer disagrees with that opinion. "I think it's open ... I'm not sure the public's perception matches the openness and accessibility that's actually there. For instance, we all have e-mail and I think for all of us it's being used more and more. I do read them, and we eventually get some response out, and I

think legislators encourage that."

Adds Hasler, "When it comes to critical issues, our efforts are made even more aggressive about public input. For example, I know when we were looking at the property tax relief question, the House Ways and Means Committee went on the road across the state and took public input.

"That was a huge commitment, but it was very valuable, and we actually learned firsthand from the public the problems that they were experiencing," he notes.

A clear contributor to the public perception of a closed-door policy is the activity at the very end of each General Assembly.

"I would guess that's where a lot of the consternation comes from. It's late in the session when things get patched together, and often that's done within hours of the end. That's human nature," Bainbridge explains.

Reflecting back over the past few decades, Bainbridge says the openness has improved by leaps and bounds.

"Now it's prevalent, and I think it's really where it needs to be," he states. "If you go back to Gov. McNutt's time [in the 1930s], there were instances where they passed major legislation, tax legislation, without a bill even having been printed or written.

"In the early '70s, late '60s, conference committee reports often were not seen. And, the public never saw them," he recalls.

Indeed, the sharing of basic information among the legislators, which is commonplace now, wasn't always a given, Brinegar notes. "I remember just before I came to the LSA, there was a time when you'd go to a committee hearing and the only person who had a copy of the bill being heard was the committee chairman."

Bainbridge echoes, "Often the

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legislators didn’t even see legislation until the day they voted on it.”

Perhaps no force has increased the openness of the legislative activity, both internally and externally, more than technology.

“Essentially, anyone with Internet access can look up a bill, the court’s calendar schedule, a committee schedule, etc., so it is infinitely more open than it was years ago,” Brinegar states.

According to all the panelists, an area that could use improvement and would promote greater public accessibility is the size of the committee rooms. “The committee rooms need to be bigger so when the public really does want to

come hear testimony and debate on an issue at the committee level, they truly have an opportunity to do so,” Brinegar declares.

“Those rooms are so small that by the time lobbyists, legislators and interns take their places, anyone from the general public who would want to come is often pushed out into the hallway.”

### Session dynamics

More and more it appears the short session of the General Assembly deals less with emergency issues, as was originally intended, and is merely a compacted version of the long session.

Scholer wonders if this development is a good idea. “It would be correct to say that it sort of turned into a condensed long session because if you look at the amount of legislation it’s pretty similar,” she says. I’m not certain we need that. I think we limit, on the House side, the number of bills, and if that was done across the hall [in the Senate], I think maybe we’d have an opportunity to do a better job of crafting legislation in that short session.”

A remedy to the increasing amount of legislation isn’t likely though, cautions Bainbridge. “It’s very difficult because every Legislature feels that it has got issues that have to be addressed, so trying to convince them that one issue can be addressed and they’ve got to prioritize and determine that another one can’t be, that makes it very difficult.”

Identifying exactly why there’s so much legislation would be good starting point. “I think it reflects the fact that so many people feel they have to come to the Legislature to solve all their problems,” Scholer shares. “It didn’t used to be that you automatically turned to government when you had a problem.”

With the abundance of legislation to be considered, all of the committees and interim committees in place, does Indiana currently have the best structure in place to accommodate these growing responsibilities? Would a full-time Legislature better serve Hoosiers?

Scholer isn’t buying the argument. “When you talk to legislators from other states that do meet more year-round, they fundamentally operate in the same way [as Indiana] and whether in the end they get more accomplished or not, I’m not convinced that that’s true.”

The suggestion doesn’t sit well with Brinegar either. “I think this is a process that is designed such that the tough decisions don’t get made until you’re right up against or past the deadline. So if you have a longer time to make the deadlines, it doesn’t mean you make more good decisions, it just means things drag out longer,” he states.

A by-product of legislators waiting until their backs are against the wall at session’s end are the omnibus bills, also known as Christmas tree bills due to the cornucopia of unrelated concepts that often adorn them at the final hour in a last-ditch attempt to enhance odds for passage.

This means legislators often have to pick their battles and make tough choices. “You just have to look at it and see whether the good outweighs the bad sometimes,” Scholer reasons. “Many times there are issues that perhaps you’re in agreement with all of the issues and are pleased to see them in there, but quite often there’s some controversial things in there, and it does make it hard sometimes to justify

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your vote either way.”

“It’s really a mixed bag,” Hasler indicates. “On the one hand you’re trying to find homes for a lot of things you’ve been working on, so you’re trying to build that Christmas tree up. But if you build it too well, it’s going to fall over from its own weight and bring all the bills down.”

## Re-election and term limits

With elections being every two years in the House of Representatives, Hasler and Scholer say that it felt to some degree that they were constantly running for re-election.

“In my constituency I quite frequently had people say, ‘Why don’t you go to longer terms instead of running every two years?’ It seems very expensive and not really a time

frame that gives you the ability to work through issues without thinking about the political ramifications,” Scholer states. “Certainly, you have reason to be in close contact with your constituents and that part is good.”

That notion – to keep government close to the people – was the original basis for the two-year tenure. Given today’s environment, Hasler questions the practicality.

“You’re constantly trying to raise money and attending so many meetings because you’re going to be running in a very short time, plus it creates quite a burden on the individual and their family,” he concludes.

Another timing issue frequently bandied about is term limits for legislators. This is one area the panel hopes Indiana never seriously entertains. “What happens when you have term limits in place is that you lose a lot of the institutional knowledge,” Hasler declares.

He draws a federal parallel with Sen. Richard Lugar and former Rep. Lee Hamilton. “If we had enacted term limits when it first became popular, then both of those gentlemen would have been retired, and we would have lost enormous expertise in Congress.”

Besides, Scholer says, “When you look at the legislative bodies, there is turnover. I think what people react to when they request term limits is the power that can be accumulated by someone that stays, for instance, in a major chairmanship for years and years.”

## Room for improvement

Along that line, concentration of power in too few people is a valid concern.

“For example, many times during the session you pick up the paper and read an editorial discussing a particular committee chairman and his ability to single-handedly kill legislation,” Bainbridge states.

“Well, there is a purpose for that, but that’s one of those issues that causes the people to feel that the system is less open and causes concern, but I don’t know if that can ever be changed.”

Brinegar attests that when the power has been spread between two co-chairs (due to a 50/50 split in the House) it was far

from smooth sailing and not practical for getting things done.

“The year this happened in the House Ways and Means Committee we had more bills flying out of there than ever before. Some of the bills weren’t even consistent with one another, and it was chaos by the time the legislation got to the floor.”

Another challenging matter that needs tackling, says Scholer, is improved communication between the education and financial sectors.

“Somehow we need to allow the fiscal people to gain the same level of knowledge about the educational side of the issues that we get through the House Education Committee,” she believes. “It’s such a critical part of economic development now, but these are two separate committees that look at these things from two very different viewpoints.

“They have got to be married in some way to get the funding in place for us to move forward,” Scholer maintains.

The panel also raised a couple procedural issues. “I fundamentally believe that legislators should be present to actually cast their votes on bills,” Brinegar asserts.

“Currently in House committees, legislators’ names can be associated with a vote for which they weren’t present. That is particularly problematic when you have amendments that the legislator didn’t even anticipate would be offered and yet votes without having seen the amendment.”

The area the panel most strongly expressed needed improvement was the germaneness rules, which pertain to whether or not an amendment is defined as relevant to a specific bill.

“For a number of years, there has been a two-tier system of review. In the House, it’s been fairly relaxed on germane issues, and in the Senate, it’s been very closely guarded. I think that’s made the legislative process that much more difficult for House members. For the Senate, it’s a huge advantage,” Hasler explains.

Bainbridge suggests the House model should be implemented across the board. “When you look at the Senate rule, it is so subjective. And, the more subjectivity you put into the system, the more power you concentrate with a smaller number of people.”

According to Brinegar, the key is parity in the rules. “I don’t know that it really makes much difference whether it’s the Senate’s way or the House’s way because everybody will adjust to the rules of the game and learn to play by them.”

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