

No fantasy: Odd(s) battle looms

Fantasy sports gambling policy, politics bubbling to the fore

In our sister newsletter, **INDIANA GAMING INSIGHT**, we wrote last week about the growing proliferation of fantasy sports gambling and suggested that - in addition to a forthcoming congressional battle - the state was ripe for a fight on a few fronts on this issue in 2016.

Little did we know that over the weekend after we published our story, the *New York Times* would come out with a full-barreled editorial taking aim at the practice, the American Gaming Association would go on the defensive as a result, and then everything would come crashing down as the two major professional football fantasy sports leagues became embroiled in what may media outlets decried as a "scandal" over the employee of one allegedly using "inside" data to pocket a tidy six-figure sum from the other. And then by mid-week, one of the sites ended up hiring a former U.S. attorney general to help it better police internal and industry practices.

Whew.

U.S. Rep. Fred Upton (R-MI) - whose Michigan district abuts Indiana's northern border and who played Batman to then-U.S. Rep. Tim Roemer (D) as Robin in congressional recognition of the Pokagon Band of Potawatomi Indians a generation (!) ago - is expected to hold hearings of his House Committee on Energy and Commerce about the proliferation of for-profit fantasy sports sites (the Committee on Judiciary is also making noises about butting in). U.S. Rep. Dina Titus (D-NV) - who represents Las Vegas - wrote to Rep. Upton Thursday calling it "critical" that Congress "investigate this growing industry." "Many experts in gaming law believe that the business model violates the Unlawful Internet Gambling Enforcement Act," she wrote.

The bills likely to be under review have some clout: the Senate version is authored by a presidential candidate, U.S. Sen. Lindsay Graham (R-SC), while a House speaker hopeful, U.S. Rep. Jason Chaffetz (R-UT), authors the other.

U.S. Reps. Susan Brooks (R) and Larry Bucshon (R) are members of the Commerce panel, and Rep. Brooks - a former U.S. Attorney - serves on the Subcommittee on Commerce, Manufacturing, and Trade likely to be assigned the heavy lift on a measure addressing a rapidly growing billion-buck industry.

Some allege that the lucrative businesses may be violating laws against gambling as debate rages over whether they are legitimate games of skill or just chance, and what laws of what jurisdictions should govern them (the Unlawful Internet Gambling Enforcement Act of 2006 effectively prohibited online poker and sports betting sites, but exempted fantasy sports as games of skill). This comes even as Howard Stutz wrote in his *Las Vegas Review-Journal* gaming column, "The number of states exploring the legalities surrounding the booming daily fantasy sports business is growing as fast as the business."

In Indiana, Rep. Alan Morrison (R) of Terre Haute, who earned degrees in sports management and has worked in the field at the collegiate and professional levels, tells Jason Fechner of WRTV-TV *R7V6* in Indianapolis that he plans to make what Fechner describes as "a renewed push to try and help the Hoosier state cash in on fantasy sports."

Rep. Morrison, who was the only lawmaker to advance the concept in the past, explains that "Obviously right now, people are taking advantage of it online and that money's flowing outside of Indiana," he concludes.

For more, please see the following page . . .

Accounting for local cash info

IU PPI details how to improve fiscal info

Researchers with the Indiana University Public Policy Institute call for reform and updating in the financial reporting of local governments in a new issue brief designed to assist the General Assembly and Department of Local Government Finance.

Professor Craig Johnson of the Indiana University Bloomington School of Public and Environmental Affairs and IU Public Policy Institute Senior Analyst Jamie Palmer, leaders of a continuing local government fiscal benchmarking project, described the problems and recommended fixes in the latest product from an initiative to provide decision-makers with unbiased information about issues facing state and local government.

The researchers identified six challenges that involve many Indiana communities:

- Using cash accounting for financial reporting
- An inconsistent and incomplete system of fund codes and transaction codes that fails to identify pass-through and other double-counted funds
- A lack of complete budget reporting
- A varied treatment of "enterprise" operations, particularly by the state's largest cities
- Debt reporting issues (short- and long-term)
- The unique structure and treatment of the City of Indianapolis

After analyzing the data contained in that initial report, the project team is recommending a series of steps to improve Indiana financial reporting and provide greater Indiana local government financial transparency:

- Follow the Government Standards Accounting Board Generally Accepted Accounting Principles (GAAP)-compliant principles
- Adopt a complete set of fund, receipt, and disbursement coding such as the uniform fund coding system adopted by the State Board of Accounts for county governments
- Require reporting of full local government budgets
- Improve the quality of debt reporting, (short- and long-term) including debt instruments backing lease rental arrangements, and debt retirement dates

Rep. Morrison continues, “As we look at gaming throughout Indiana and how we are going to further the business model, looking at maybe placing those types of daily fantasy services inside our gaming facilities I think is a good step for Indiana.”

He reveals “This year, I plan on trying to lay the groundwork a little earlier and see if we can get a hearing and work it through committee and hopefully get it on to the floor,” adding, “some of my colleagues think this is good idea, a positive idea for the gaming industry in Indiana.”

While Indiana has traditionally opted for the “wait and see” approach on gaming-related technology issues, the large numbers of Hoosiers (particularly young ones who have no interest in physical casinos) who already participate in free fantasy sports and the blitz of enticements to get them to take the next step to playing for money may raise enough of a red flag in the minds of some anti-gambling solons – and dollar signs in the eyes of some libertarian-leaning lawmakers – to at least merit a hearing . . . as many questions swirl over just how legal the activity might be in the Hoosier State.

This is effectively a perfect storm of sorts.

Those who are concerned about gaming addiction among younger Hoosiers – and many lawmakers, executive branch officials, and regulators in the past two decades have decried online poker sites – need only look at DePauw University, where the school newspaper highlighted the case of DePauw senior Bryce Mauro, who is “on sites such as FanDuel and DraftKings investing upwards of six figures per week.”

Early this year, *BloombergBusinessweek* featured the Hoosier college student as well in a story about fantasy sports sites. “Mauro says he spends about \$35,000 on as many as 1,000 NFL contests per week on FanDuel and other sites, plus another \$15,000 per night on basketball. He says he made \$250,000 in profit last year. ‘I do it as my full-time job, basically,’ he says.” According to 93.9-FM *The Beat* in Indianapolis, Mauro “is making around 500k yearly off his fantasy leagues!”

Some states, including our neighbor to the north, Michigan, are studying whether its criminal gambling laws apply to fantasy sports. The Michigan Gaming Control Board has posited that daily fantasy sports are likely illegal in that state, and regulatory legislation has been discussed in Illinois.

And, we believe, the situation may be about to come to the fore in Indiana . . . and it could be messy.

Recall that the Governor has been adamantly opposed to expanding gambling, and he has pushed for more dollars to be directed to gaming addiction programs. We’d wager that he’d probably go ballistic if he read the DePauw student newspaper’s take on the student making cash on the fantasy gambling site: “Mauro’s experience is a prime example of what DePauw does for its students. Even before he graduates, DePauw’s education and curriculum has paid off for him in more ways than one.”

But the fantasy sports gambling issue may see many more perspectives taken by Hoosier policymakers as events unfold. Fantasy sports leagues and the National Football League (and major cable sports networks) have a symbiotic (and lucrative) relationship, and will push for legalization and expansion of fantasy sports wagering. The General Assembly will be called upon by Rep. Morrison to cash in on the craze and help prop up the state budget even as gaming revenue from traditional riverboats continues to plummet, and younger members, accustomed to online activities and e-commerce in general, may see this as a golden opportunity to replace casino wagering in the future . . . as millennials are already showing that they have little interest in playing boring non-interactive slot machines at brick-and-mortar (much less floating) casinos.

However, the more interesting – and perhaps more important – tussle could come between the Governor’s Office and Indiana Gaming Commission on one side and the Office of the Attorney General on the other.

As we indicated in our sister newsletter, based on parsing past statements and what we’ve seen from the office over the past 20 years, we believe the Office of the Attorney General would likely take the position that this form of fantasy sports wagering would be legal in Indiana because it is *primarily* skill-based . . . but if we’re correctly reading what we’ve seen from the Gameboys – and the non-expansionist Governor – if a game is dependent upon *any* element of chance, they would view it as illegal – and fantasy sports can be dependent upon coin flips, injuries, etc.

A Commission “Illegal Gambling FAQs” fact sheet explains that under the statute, “ ‘Gambling’ means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device. If one of these elements of the gambling definition is removed, then the activity is legal.”

We wouldn’t be surprised to see someone ask a question of prospective 2016 attorney general candidates about this statute’s interpretation – and the answers just might motivate otherwise apathetic millennials to vote in a down ballot race!

Opening this discussion could be a Pandora’s Box that could lead to games like poker and euchre no longer being considered gambling even if played for money . . . and perhaps even pave the way to private sports betting. Should anyone file litigation, the third branch of state government could be called upon to interpret the intent and application of the statute.

“Many regulators, many policymakers, are saying that this is a gray area,” observed American Gaming Association President Geoff Freeman at the Global Gaming Expo in Las Vegas at the end of September. “Well, it’s time to make it black or white,” he contends. “Casinos can either get involved in this business or they can’t.”

Bloomberg reported early this month that “At the casino industry’s biggest trade show . . . the hottest topic is a growing business that’s left major players [among the casinos] out of the action: fantasy sports.”

Bloomberg quoted Tim Wilmott, president and chief executive officer of Penn National Gaming Inc., which owns Hollywood Casino Lawrenceburg. His comment: "The NFL is being exposed as hypocritical. Lawmakers are starting to look at this and say, why is this different?"

At least until the feds step in, the for-profit fantasy sports industry is here to stay, and even the most recent "crisis" about insider access to playing percentages is likely to make the industry stronger in the long run.

As with many legislative proposals, the issue was overlooked totally when it first was brought up, and now with some local and national attention focused upon it, there could be some buzz in 2016, with serious attention then likely focused upon it in 2017 . . . a point by which federal legislation and the rush of other states to cash in could make any Indiana move to enter the field (in a positive or negative context) moot.

IN Politics

Federal Office Races . . .

- The Centrist Project, a national political organization focused on finding and electing viable independent candidates to the U.S. Senate in 2016, is casting about to identify and recruit prospective candidates in Indiana, thinking that this might be a state that make sense to compete in as it seeks to elect five independent senators by 2020 who can create an agenda-setting "fulcrum" of sorts to influence setting the Senate's - and thus the federal government's - political agenda.

- Don't expect much in the way of local action, once they review the roster of major party candidates (three of the five at least appear to be about as moderate as their respective parties might nominate, unlike what we've seen in some past years), and when their lawyers crack open the Indiana Code and discover just how difficult the ballot access petition requirements render an independent statewide candidacy.

- Sen. Liz Brown (R) joins Sen. Jim Banks (R) among CD 03 candidates in signing the Americans for Tax Reform Taxpayer Protection Pledge, a written commitment to oppose higher taxes . . . former Whitley County Council member Scott Wise (R) exits the CD 03 race due to job and family commitments. He would have been hard-pressed to break into the four figures in actual votes, but even that small number could have allowed him to play spoiler in what will now be a hotly contested four-way race.

- Dr. Richard Moss (R) of Jasper announces he will oppose U.S. Rep. Larry Bucshon (R) in the primary, blasting the incumbent for standing with the "hapless, stand-for-nothing" Gop House leadership. Dr. Moss, an otolaryngologist, unsuccessfully challenged Rep. Mike Braun (R) in the 2014 primary, polling about one-third of the votes. This appears to be the first Hoosier congressional primary election involving a pair of physicians since the 2008 CD 07 Democratic primary.

State Office Races . . .

- And wouldn't lots of folks in the political chattering class like to know who is polling on the U.S. Senate and gubernatorial races . . . but asking whether they could support U.S. Rep. Todd Young (R), U.S. Sen. Dan Coats (R), or former state treasurer Richard Mourdock (R) for *governor*? The usual suspects for such polling are denying any knowledge, and the combination of names being tested wouldn't seem to fit the profile of candidates that tea party-types or the business-LGBT community would necessarily be casting about for - unless one or more of the names are red herrings of sorts?

- Former attorney general Steve Carter (R) expands his exploratory campaign with a late September direct mail campaign to Republicans across the state reiterating what he has been saying about a potential candidacy and his prior service.

Legislative Races . . .

- The Republican caucus to fill the HD 68 vacancy will take place on October 22 at 6:30 p.m. (EDT) at the Franklin County Government Center in Brookville.

- Former Rep. Jud McMillin (R), whose late September resignation prompted the caucus, reported a cash-on-hand balance of \$10,473.21 in his campaign account as of the last reporting date, which closed December 31, 2014.

- This will be the fourth party caucus (three Republican, one Democratic) convened statewide to plug a vacancy for someone elected in 2014 (and the three Republican seats have all been voluntary resignations).

- Brian Smith (D) of Leesburg was introduced earlier this month at the annual Kosciusko County Democratic Party Jefferson/Jackson Dinner as the local party choice for an HD 22 challenge to Rep. Curt Nisly (R). The Kosciusko County Democratic Party treasurer was a member of the 2014-2015 class in the Indiana Democratic Party Emerging Leaders Project.

- James W. Grimes (R) of Indianapolis, a Marion County Sheriff's Department deputy and CEO/broker with his Jim Grimes Realty, opens a campaign committee for an HD 91 primary challenge to Rep. Bob Behning (R), who has staved off a number of recent primary challengers.

Mayoral Races . . .

- Chuck Brewer (R) hits the local television airwaves one month before the open seat election for mayor of Indianapolis.

Other Political News . . .

- In a move that had been in the works for several months, political pro Robert Vane returns to the Indiana Republican Party as spokesman and media consultant on a contractual basis through his Veteran Strategies firm. Vane had been working for the Mike Pence for Indiana Committee, and state party officials explain that this appointment marks an expanded role from Pence campaign spokesman to overseeing message coordination for Hoosier Republican candidates through the November 2016 election.

□ Vane, of course, had been doing much more than just communications work for the Pence campaign, providing strategic direction and discreet behind-the-scenes advice to Pence campaign and gubernatorial staffers, particularly with respect to RFRA and anti-discrimination issues based on his campaign and official work for Indianapolis Mayor Greg Ballard (R) and other statewide elective officials across the past 15 years, as well as previous state party comms service more than a decade ago. In moving back to state committee, Vane will also serve as the primary media point of contact and direct rapid response efforts on behalf of the Republican candidates throughout the state.

● U.S. Rep. Todd Rokita (R) becomes the fifth House member and the most prominent Hoosier to endorse U.S. Sen. Marco Rubio (R-FL) for president (and all of the other members of Hoosier Republican congressional delegation are keeping their presidential powder dry for now). Rep. Rokita has teamed with Sen. Rubio on education and labor-related legislation.

□ “As the son of a bartender and a hotel maid, Marco Rubio understands the importance of preserving the American Dream for future generations better than anyone else, and I’m proud to endorse him for President,” explained Rep. Rokita. “Marco’s uplifting vision for a New American Century is what our country needs and I look forward to helping him in the Hoosier State.”

● During a question-and-answer period following a recent speech at St. Olaf College, former U.S. Sen. Richard Lugar (R) observed that many people find Donald Trump (R) appealing as a presidential candidate. Trump “expresses the general disgust that a majority of people feel towards Congress,” Lugar noted. He also had stern words for Dr. Ben Carson (R) over Dr. Carson’s comments about not supporting a Muslim for president. “Persons who are citizens of the United States are eligible to become president, or to become senators, or to take office. The Republicans have to have a more inclusive party, and that is not obtained by abusing people of diversity,” Lugar added.

● ARCADIS U.S. Political Action Committee, affiliated with ARCADIS U.S. Inc., an international design and consultancy firm for natural and built assets with North American offices in Colorado, registers its federal political action committee with the Indiana Election Division to “support various federal, state, and local political candidates.”

IN Brief

IN Federal Circles . . .

● U.S. Sen. Dan Coats (R) joins 34 of his Republican Senate colleagues in sending a letter to the U.S. Department of Health and Human Services Inspector General Daniel R. Levinson calling for a full audit of all fetal research supported by HHS to determine whether there have been violations of the law and how the agency verifies compliance by Planned Parenthood

and other grantees. The requested audit would specifically examine the Department’s oversight of contractor and grantee compliance with laws governing fetal tissue research . . . in his weekly “Waste of the Week” speech Wednesday, Sen. Coats highlighted federal spending on reading robots, explaining to colleagues how the National Science Foundation recently awarded a \$440,855 taxpayer-funded grant to develop the use of “autonomous, personalized social robots” in the classroom. He suggested that “Personalized and controlled social interaction” is what a teacher is supposed to do. The purpose of the grant, which began last month and continues until August 2017, is to create robots that can tell stories to children. “Actual human teachers provide what robots cannot. They relate to our children, understand their individual needs and tailor instruction to bring out the very best in our kids.” He observed that “there are many private companies that offer products that use technology to help children learn,” asking “is it really the role of the government to also perform this sort of research?”

● U.S. Sen. Joe Donnelly (D) testified Tuesday before the Senate Committee on Veterans Affairs, emphasizing the importance of training private, community mental health providers to better treat servicemembers and veterans. He observed during his testimony that “The suicide rate among our military servicemembers and veterans is not just a tragedy – it is a crisis.” He is advocating a package of three bipartisan bills to help expand access to quality mental health care for servicemembers and veterans through both U.S. Department of Defense and Veterans Administration facilities, as well as local community providers . . . on Wednesday, the full Senate passed the National Defense Authorization Act (NDAA) with strong bipartisan support in a 70-27 vote (Sen. Donnelly was one of the 20 Democrats to buck the threat of a presidential veto). The national defense bill includes provisions from Sen. Donnelly’s bipartisan “Servicemember and Veteran Mental Health Care Package” which would improve mental health care for servicemembers and their families.

● U.S. Rep. Susan Brooks (R) could be center stage during the high-profile October 22 hearing of the Select Committee on Benghazi. The non-threatening persona of the former federal prosecutor may allow her to help deflect some of the criticism levied against Republicans over comments by House Majority Leader Kevin McCarthy (R-CA), the former favored candidate for speaker, that have made it appear the probe was initiated to weaken former secretary of state Hillary Clinton (D) politically. The first Clinton TV spot, released last week, shows Rep. McCarthy – who made a fundraising stop in Carmel for Rep. Brooks and the Hamilton County Republican Party just about one year ago (as did the Benghazi panel chair, U.S. Rep. Trey Gowdy (R-SC) just last month) – saying on Fox News: “Everybody thought Hillary Clinton was unbeatable, right, but we put together a Benghazi special committee What are her numbers today?” We expect some subtle digs at Clinton by Rep. Brooks to help re-direct the attention of the public to the substance, and not the politics of the panel, reinforcing why outgoing House GOP leadership added her to the panel despite her not seeking the assignment.

- U.S. Rep. Jackie Walorski (R) is one of 22 Republicans on the House Committee on Armed Services Committee signing a Tuesday letter to the President urging him to keep 9,800 U.S. troops in Afghanistan through 2016. The letter asserts that “While we have achieved considerable progress in Afghanistan, the nation will once again become a safe haven for terrorism if we choose to abandon our investment We must learn from our experience in Iraq and be careful not to put the progress we have made in jeopardy. Withdrawing from a country does not mean the problem goes away” . . . after the Senate passed the National Defense Authorization Act (NDAA) Wednesday, Rep. Walorski said “I’m grateful to see my Republican and Democrat colleagues in the Senate support military readiness for our troops and my language restricting detainees from being transferred out of Guantanamo. I only hope the President can put politics aside to sign this legislation into law and protect our national security while ensuring our men and women are equipped with the necessary tools to fight increasing global threats both at home and abroad.”

- U.S. Rep. Todd Rokita (R) uses a recent newsletter to CD 04 constituents to discuss Planned Parenthood and the government funding measure. He writes that “The American people expect Congress to exercise its ‘power of the purse’ and otherwise work its will in representing them pursuant to the Constitution. Hoosiers told me that they do not want their representatives to support funding Planned Parenthood, especially in light of the recent videos revealing their gruesome practices. My intention is to fund the government without spending our tax dollars on an organization that cuts up babies and sells their body parts for money. At the same time, my intention is to apply these funds to support organizations that provide women’s health services without resorting to such gruesome practices. The Senate should not shield the President from being accountable to the American people on this issue. The President should have been made to back up his rhetoric by taking action to either protect life by signing our bill into law or protecting Planned Parenthood by vetoing the bill and shutting down the government.”

- U.S. Rep. Pete Visclosky (D) testified at Tuesday’s hearing of the International Trade Commission on welded line pipe, in the case involving cut-to-length carbon plate from China, Russia, and Ukraine. He urged the Commission to make an affirmative injury determination on the illegal import of welded line pipe from Korea and Turkey, expressing his concern about “the unrelenting efforts of foreign producers to violate our trade laws and breach international trading standards to the detriment and harm of the American steel industry and other manufacturing industries.” He related a story about a company that exports Chinese goods avoiding the high antidumping duties levied on products from China by circumventing country of origin labeling requirements, and labeled the “common practice” as “absolutely unacceptable. I recognize that this is an issue addressed by the U.S. Customs and Border Protection, but I believe this email illustrates how some have a blatant disregard for U.S. trade laws. We cannot stand by and let these producers flood our free market with illegal imports.”

- U.S. Rep. Marlin Stutzman (R) is used by the *New York Times* to help personify hardline conservatives in the U.S. House who “say their policy positions – drastic reductions in the size of government and lower taxes – are repeatedly undercut by the unwillingness of Republican leaders to contemplate using their ultimate weapon, the power of the purse, to force a government shutdown. Rather than trying to get past the paralysis, Mr. Stutzman and his allies want to use it to maximum effect.” “I think it’s the desire for good government, for the process to work in the House, the desire for amendments to be offered, just for regular order,” Rep. Stutzman tells the paper. “I really think that’s what brings us together” . . . Rep. Stutzman tells *The Hill* Thursday that the fight over the debt ceiling “should be left to the next leadership team,” and not outgoing House Speaker John Boehner (R-OH) and his crew. “It’s a fresh start for whoever is coming in” . . . following Wednesday’s adoption of H. Res. 461, which establishes a Select Investigative Panel of the Committee on Energy and Commerce, Rep. Stutzman said that “Planned Parenthood’s practices of harvesting the bodies of innocent babies rightly sparked outrage and concern from Americans all across the political spectrum. Important questions remain and it is critical that the legislative branch get all the answers it can. This bipartisan panel is the appropriate and necessary vehicle to determine the truth about the practices of organizations like Planned Parenthood and how we can improve important legal protections for children and unborn babies.”

IN State Circles . . .

- As the Governor and his team continue discussions with assorted unidentified constituencies over acceptable language for an anti-discrimination package, Senate Democrats seize the day with the promise by Senate Democratic Leader Tim Lanane (D) to introduce language adding sexual orientation and gender identity to Indiana’s Civil Rights statutes in the next session. He released a preliminary draft last week, saying that the measure “guarantees protections in the simplest, strongest fashion possible.”

- Sen. Lanane hopes to pre-empt any bill offering fewer protections for the LGBT community and set the agenda with his measure. “Hoosiers expect nothing less than equal protection under the law for LGBT Hoosiers and that’s what we’ve drafted,” he said. “While others are keeping conversations behind closed doors, we’re ready to move this forward.”

- When was the last time that a legislative leader (whose party also controlled the Governor’s Office) believed that an issue was so pressing that it effectively warranted reopening the budget in a short session? Well, House Speaker Brian Bosma (R) acknowledged Tuesday that infrastructure funding will be the top issue that lawmakers will have to deal with in 2016 (along with the teacher “shortage”), and that should make it clear that you can look at at least a \$200 million hit, and probably closer to \$250 million once the December revenue forecast rolls out and it becomes clearer what reserves must be maintained to retain the State’s AAA bond rating (and don’t forget talk about tapping into the state’s reserves to pay off the Unemployment Insurance Trust Fund loan).

- Infrastructure could be the way into the hearts and minds of Hoosiers as the Indiana Democratic Party and gubernatorial challenger John Gregg (D) keep hammering away on road conditions and “waste” by the Indiana Department of Transportation, and even as the International Union of Operating Engineers Local 150 ramps down its expensive radio and television campaign aimed squarely at Governor Mike Pence (R), it is said to be behind a similarly harsh direct mail (“MIKE PENCE’S DEADLY CONSEQUENCES”) and online crusade, betterroadsahead.org, that drew a stern rebuke from the Indiana Republican Party, in the first substantive defense of the campaign (strategic INDOT messaging - and leaks - have also helped to boost the image of state road programs).

- The direct mail piece names the Guv four times on one side of the mailer, claiming his “negligence could have deadly consequences for your family,” and that he is “pretending to be a fiscal conservative by postponing needed investments to create the illusion of a big surplus.”

- Of course, all of this comes without either party speaking up with a single public voice to explain just where a sustainable source of funding might be found for both building and maintaining infrastructure . . . although some brave individuals are setting the table by floating talk of tax hikes - seven states raised gas taxes this year - and assorted new user fees in the form of new tolls as well as tariffs for electric and alternative fuel vehicles and possibly even mileage charges (but that heavy lift will likely be saved for the 2017 session - after the election). The assorted stakeholders are certainly doing their part to this point.

- Look for a bistate “major progress announcement” on the Ohio River Bridges Project Downtown Crossing October 12.

- The Indiana State Department of Health promulgates an emergency rule that temporarily adds provisions to the Indiana Administrative Code concerning the disposition of aborted remains. When a patient does not elect to receive the aborted fetus, it must be “buried in the earth in an established cemetery,” or cremated, and “The facility must have written policies and procedures for the available method or methods of disposition of aborted fetuses” and “maintain evidentiary documentation demonstrating the date and method of disposition for each aborted fetus.”

- The growing heroin and opioid addiction problem first evidenced in large numbers in Southeast Indiana spread to East Central Indiana, and now is being experienced in Northeast Indiana (keep an eye on Allen County) and Northwest Indiana. As Illinois stops paying local health clinics for STD testing due to budget woes, you shouldn’t be surprised to see numbers begin to grow on the western flank of the state as well. The numbers of individuals - and numbers of counties - are growing at a rate such that public health officials and lawmakers in affected counties (and those likely to join those ranks) are likely to push for expanded addiction programs and services . . . and to make state needle exchange program authorization less unwieldy going forward.

- One growing consequence: an increasing number of Hoosier children in foster care.

- Meanwhile, the Governor directs state agencies to act on all three initial recommendations of his Task Force on Drug Enforcement, Treatment and Prevention. He has tasked the Family and Services Administration to determine the feasibility of pursuing a Medicaid § 1115 Demonstration Waiver for those with drug use disorders to broaden Indiana Medicaid benefit packages with a more comprehensive continuum of covered services and care; asked all state agencies to raise awareness of Aaron’s Law (SEA 406-2015), that allows individuals to obtain and administer lifesaving overdose intervention drugs, and wants agencies to review how they may be involved in implementing the law and any constituencies that can be notified and educated; and wants the Department of Workforce Development to work closely with existing youth assistance programs and identify best practice models to replicate these programs statewide. Democrats suggest these recommendations would accomplish little, and that the Governor dawdled in even taking steps to advocate their implementation.

- Indiana ranks 39th among the 50 states for health, education, and living standards in 2014, according to *The Human Development of Indiana Counties: A Policy Perspective*, a policy brief from Ball State’s Center for Business and Economic Research (CBER). The Center also developed a version of the United Nations Human Development Index (HDI) to measure quality of life and assess relative socioeconomic growth in all 92 Indiana counties. Indiana’s HDI is 50.62 on a scale of 100 (internationally, the United States had a ranking of 91.4, or fifth overall), and CBER staffers found higher HDI for urban counties relative to rural counties. Hamilton County achieved the highest HDI at 100, followed by Monroe County (92.09) and Tippecanoe County (88.86), both home to Indiana’s two largest public universities, with Porter and Boone counties rounding out the top five, showing what CBER researchers say is a “clear benefit to urban locations and the presence of universities.” The five counties with lowest HDI - LaGrange, Scott, Switzerland, Starke, and Crawford - are “far from metropolitan areas.” The BSU team also found that “Cities such as South Bend and Evansville received the highest HDI, whereas Anderson and Terre Haute received the lowest.”

- In *Tiplick v. State*, No. 49S04-1505-CR-287, the Indiana Supreme Court unanimously upholds the constitutionality of Indiana’s synthetic drug statute, which had been called into question by a pair of Court of Appeals rulings. In an 18-page, 5-0 opinion, Justice Mark Massa writes for the Court that the statute is not unconstitutionally vague. The law “is not a ‘maze,’ but rather a chain with three links -three discrete statutes which give clear guidance as to how to find everything falling within the definition of “synthetic drug” under Section 321. Such a statutory scheme is not unduly vague.” he also finds that so-called “look-alike statutes are also not unconstitutionally vague, because the text “gives adequate notice to ordinary persons of the conduct proscribed,” and “There are thus no grounds to find the Look-Alike Statutes are subject to arbitrary enforcement, or were arbitrarily applied to Tiplick.”

□ Justice Massa also explains that the synthetic drug statute is not an unconstitutional delegation of legislative authority in derogation of the Distribution of Powers Clause of the Indiana Constitution. The original defendant claimed that it impermissibly assigned the legislative function of enacting criminal statutes to the Pharmacy Board, an executive agency. Justice Massa wrote that “it appears to be a matter of first impression whether our General Assembly may delegate rule-making power to an administrative agency if violation of such rules would result in penal sanctions. This issue contains two pertinent questions: (1) is such a delegation permissible under the Indiana Constitution; and (2) even if generally permissible, what test should we apply to determine whether a particular delegation of this kind is valid?” He finds that the Distribution of Powers Clause “does not prohibit our General Assembly from delegating rule-making authority to administrative agencies where violation of such rules may result in criminal penalties by statute, and moreover, that it is appropriate to apply Indiana’s traditional analysis to determine whether such a delegation is valid.” He goes on to note that “Here, the Pharmacy Board has not been empowered to legislate with respect to dealing, conspiracy to commit dealing, or possession of synthetic drugs; that power has already been exercised by the General Assembly, as contained in relevant part at Indiana Code sections 35-48-4-10(a)(1) and -11 (Supp. 2012). The Pharmacy Board has merely been given the power to determine, via emergency rule, whether additional substances should qualify as “synthetic drugs” under Section 321 – in other words, ‘to determine the existence of some fact or situation upon which the law is intended to operate.’ ”

● In a move that surprised some, the Indiana Supreme Court on Tuesday granted the plaintiffs’ motion for emergency transfer in the Access to Public Records Act case involving e-mails of members of the House of Representatives, bypassing Court of Appeals review, and perhaps suggesting that the Supremes are looking to make a statement about APRA application to the legislative branch – one way or another.

● Look for the Gary Community School corporation to ask the Distressed Unit Appeals Board for a \$15 million loan – sans interest – so that it can help pay down some of its more pressing big-buck debts. We’ve told you here and in our sister newsletter, **INDIANA EDUCATION INSIGHT**, about a big backload of bills owed to, among others, the Internal Revenue Service (some \$7 million in unpaid payroll taxes alone), the Gary Sanitary District, its school bus operator, and NIPSCO.

● The Indiana Department of Revenue contracts with former deputy state examiner Marilyn Rudolph to resolve deficiencies uncovered by the State Board of Accounts in the 2014 Comprehensive Annual Financial Report (CAFR) related to IDOR’s paper check refund process. IDOR will pay Rudolph \$40,000 between September 1 and December 31 to help “shore up internal control gap and eliminate repeat finding for the current year CAFR audit.” The contract justification says that Rudolph was “**STRONGLY RECOMMENDED BY STATE BOARD OF ACCOUNTS**” because of her familiarity with the PeopleSoft process used by the state and Revenue.

● The Family and Social Services Administration’s Office of Medicaid Policy and Planning is back in the field seeking to contract with vendors to deliver risk-based managed care services to the 897,279 beneficiaries (as of July) enrolled in the state’s Hoosier Healthwise and Healthy Indiana Plan (HIP) programs. A just-released Request for Proposals serves as a re-procurement of similar services requested in RFS 10-40. Since then, OMPP explains, “a number of changes and updates have been made to both programs and the State’s interests. Most notably, the HIP program underwent a number of improvements and expansion as a part of its redesign as HIP 2.0.” The State is interested in contracting with multiple care entities “that can perform the administrative functions of a typical insurer, as well as address the unique challenges of low income children and families and can manage and integrate care along the continuum of health care services.”

□ FSSA is also seeking a contractor to provide independent program evaluation services of the Children’s Health Insurance Program (CHIP), as well as external quality review services for the Hoosier Healthwise (HHW) Healthy Indiana Plan (HIP), and Hoosier Care Connect (HCC) programs.

● Following a three-week jury trial in the U.S. District Court for the Northern District of Indiana in Hammond, the jury awards more than \$31 million in compensatory damages to a couple from Francesville who sued the Department of Child Services and Indiana State Police and individuals with both entities contending that they had been wrongfully accused of causing their 14-year-old daughter’s death a decade ago. They were arrested on felony charges, the husband lost his state job, and their other children were taken into protective custody by DCS. The federal jury opted against awarding the couple \$70 million in requested punitive damages (such an amount levied against the State likely would have been tossed or severely reduced by the judge on remittitur).

● The Hoosier Environmental Council files suit in Hendricks County Superior Court on behalf of a group of rural residents challenging the constitutionality of Indiana’s 1981 Right to Farm Act and a related 2014 law (SEA 186-2014), that “declares that it is the policy of the state to conserve, protect, and encourage the development and improvement of agriculture, agricultural businesses, and agricultural land for the production of food, fuel, fiber, and other agricultural products. The Indiana Code shall be construed to protect the rights of farmers to choose among all generally accepted farming and livestock production practices, including the use of ever changing technology.” The fact that regulators and courts must interpret and apply state law so as not to impede – and, in fact, protect – the livestock industry’s use of its preferred industry practices violates equal protection and due process rights, and amounts to an unconstitutional taking of property rights, according to the HEC-backed lawsuit. “No other industry or economic sector enjoys the privilege of knowing state government agencies and courts must interpret the law to serve and protect that industry’s special interests and both laws,” the organization claims in unveiling the legal action.

□ The four plaintiffs claim that their quality of life and property values have been greatly diminished due to odors from a new concentrated animal feeding operation (CAFO) in Danville with 8,000 hogs, which claims protection for industrial-scale livestock operations under the law. HEC suggests that while the 1981 law was enacted in response to urban sprawl – to prevent urban/suburban newcomers to rural areas from suing farmers because they don't like the ordinary smells of agriculture – the playing field has changed and “farmers generally no longer raise livestock in traditional pasture settings. Now, primarily, contract growers confine thousands of animals in warehouses controlled by giant corporations. These giant corporations, not traditional family farmers, are the ones unfairly protected by the RTFA,” and now longtime rural residents who “were there first” can't effectively defend themselves when a CAFO sites nearby.

● Purdue University's 2014 *Indiana Farm Fatality Summary* details 25 farm-related deaths in Indiana last year, up by almost 40% from just 18 in 2013. Most of the 2014 fatalities were related to farm machinery, and about one-third resulted from overturned tractors.

● The Indiana Security Operations Center (SOC) opens near the Purdue University campus, a project of the new Indiana Information Sharing and Analysis Center (IN-ISAC) – a joint mission of the Indiana Office of Technology, Indiana Department of Homeland Security, Indiana National Guard, Indiana State Police, Purdue University, Intel Security, and other private sector partners. IN-SAC is now the primary hub for information sharing and analysis on cybersecurity issues in the State of Indiana. We're hearing that SOC will be staffed on-site by almost one-dozen workers – a combination of state employees and Purdue students who will monitor security incidents across the State of Indiana's computer network. At the outset, look for IN-ISAC to focus on serving Indiana state government and Purdue University through the sharing of threat information and collaboration on strategies. The Center will provide real-time network monitoring, vulnerability identification, and threat warnings related to state IT systems.

● With Gannett Company's \$280 million purchase of the newspaper company Journal Media Group, it will expand its reach across the state to Evansville, as the buyout includes the *Evansville Courier & Press*. Once the sale is consummated, Gannett will own papers in five of the state's major cities: Indianapolis, Evansville, Lafayette, Muncie, and Richmond – as well as newspapers in Louisville and Cincinnati which reach deep into the Indiana market.

● The Conexus Indiana Central Regional Logistics Council (CRLC) releases its regional logistics strategic plan detailing long-term infrastructure, public policy and talent development priorities to grow the logistics industry and the economy in a 28-county Central Indiana region. *Strengthening the Crossroads: Driving Central Indiana's Logistics Industry* identifies 74 discrete infrastructure (road, rail, air, and waterborne transportation) projects, as well as public policy and workforce development opportunities, and establishes priorities for implementation.

□ CRLC's priority infrastructure projects include:

- Completing I-69 from Bloomington to Indianapolis
- Adding lanes on I-65, I-70, and I-69
- Finishing the rural segments of U.S. 31
- Connecting I-69 to I-65 with an outer loop connecting Madison, Hamilton, Hancock, Shelby, Johnson, Morgan, Hendricks, and Boone counties
- Converting U.S. 36 to freeway-like access from I-465 to Danville
- Widening the existing 2-lane segment of U.S. 231 to a 4-lane segment from Lafayette to I-74 in Crawfordsville
- Improving and widening U.S. 27 to a “Super-2” from Monroe to I-70 in Richmond

● As U.S. government officials fervently seek to learn how ISIS terrorists have been able to add hundreds of brand new Toyota pickup trucks to their fleet, you'll rest a bit easier knowing that the Hilux pickup trucks are not among the inventory manufactured in Gibson County.

● The Indiana Public Retirement System commits \$290 million to four managers, reports *Pensions & Investments*, including “\$90 million to Sumeru Equity Partners Fund, a growth-oriented private equity fund focused on North American midmarket technology companies, and \$50 million to Related Real Estate Fund II, an opportunistic fund managed by Related Cos.. INPRS also committed an additional \$150 million in total to risk-parity managers AQR Capital Management and Bridgewater Associates. AQR will get \$100 million and Bridgewater will receive \$50 million, boosting their totals to \$1.2 billion each. The moves, made after June 30, were the result of an increase in INPRS' risk-parity allocation to 12%, which was approved by the board in June. Reductions in global equity and real estate funded the shift to risk parity.”

□ INPRS also reveals it had posted a Fiscal Year 2015 negative return (- 0.03%) on investments, “largely the result of a 30.3% loss in its commodities portfolio. Despite the loss from commodities, which accounted for 7.5% of system assets, INPRS investments outpaced its -0.12% custom benchmark return for the fiscal year Total plan assets were down 0.9% from 12 months earlier. The system's best-performing asset class was its 12.9% private equity allocation, which returned 10.9%. For its other asset classes, real estate returned 10.6%; absolute return, 3.77%; global equity, 2.39%; ex-inflation-linked fixed income, 1.54%; cash, 1.49%; inflation-linked fixed income, -0.09%; and risk parity, -3.14%.”

IN the Economy

● The Pacific Research Institute (PRI) released a report that compares the impact of each state's regulatory environments on the small business economy. Indiana has the lowest (least burdensome) national ranking in terms of state regulatory structures, based on a review of 14 components. The National Federation of Independent Business breaks out four of the index's 14 components that it finds particularly important to small business growth.

□ In terms of workers' compensation program, Indiana's regulatory system is the second least burdensome, while the Unemployment Insurance program is found to be the 19th least burdensome nationally. Land use regulation is sixth least burdensome among all states, but we are 29th in economic efficiency of state energy regulations.

● The new *Inc.* magazine list of the 5,000 fastest-growing private companies in America (ranked by revenue growth over three years) is on the streets, and Indiana ranks 22nd among the states in terms of the number (67) of companies on the annual list.

● Matt Kinghorn and Zoe Caplan of the Indiana Business Research Center in the Indiana University Kelley School of Business write that "a number of key housing indicators ... show marked improvement over the last year. Home sales over a 12-month period ending in June 2015 were up more than 6 percent over the same stretch a year earlier. Buyer demand was so strong this summer that Hoosiers purchased 9,080 existing homes in June alone - the state's second-largest one-month sales tally in the last 12 years. The state reached a couple of other important milestones in 2015. According to the Federal Housing Finance Agency, Indiana's house prices in the first quarter of 2015 finally eclipsed their pre-recession peak, meaning that the state's home values have now recovered all of the ground they lost in the wake of the housing slump. Indiana's foreclosure rate, meanwhile, has been cut by more than half since the end of 2011, and now sits at its lowest point in 14 years."

□ Single-family building permits in Indiana increased by two percent in August over July, while numbers decreased by four percent (- 51 permits) compared to August 2014 according to the latest data from the U.S. Census Bureau and the U.S. Department of Housing and Urban Development crunched by the Indiana Builders Association. Single-family building permits for the first eight months of 2015 are down by one percent compared to January - August 2014.

● The United Auto Workers union is and Fiat Chrysler Automobiles NV averted a strike last week with a tentative agreement on new labor contract, after UAW officials told workers at the Tipton transmission mega-plant and Kokomo casting and transmission plants to prepare for a work stoppage. *Automotive News* had looked at the implications of a strategic "Indiana-only" work stoppage: "A strike only at FCA's giant Kokomo Transmission operations in Indiana would shut down about 75 percent of profitable Jeep and Ram pickup production, said Kristin Dziczek, director of the industry and labor group at the Center for Automotive Research in Ann Arbor, Mich."

● We were first to tell you about Rolls-Royce telling Senate fiscal leaders earlier this year that it backed a change in state law to boost economic development incentives for big-buck investment in technology even if it wouldn't necessarily be associated with large short-term increases in employment. Former U.S. Rep. Ed Pease (R), now with Rolls-Royce, laid out the case given the state's priority on advanced manufacturing, and we told you that he was hinting at a

major investment by Rolls-Royce locally if the State made large incentives available. Last week, Rolls-Royce announced plans to invest almost \$600 million in modernizing and upgrading Indianapolis operations and research divisions over the next five years, the company's largest in the U.S. since buying the former Allison Engine Company in 1995. The Indiana Economic Development Corporation offers Rolls-Royce up to \$17 million in performance-based tax credits, and up to \$1.425 million in training grants. The City of Indianapolis will consider additional incentives . . . Skally's Old World Bakery, a family-owned bagel and pita bread bakery, plans to invest \$40 million to construct and equip a 350,000 square-foot, state-of-the-art production facility along I-74 at Brookville/U.S. 52 exit in West Harrison, which will house a bread production line serving customers in 40 states. The investment, which complements the company's Cincinnati facility, is anticipated to create up to 150 new high-wage jobs by 2021. The Cincinnati Enquirer reports that "The shift from Southwest Ohio to Southeast Indiana came after the company withdrew its Liberty Township proposal in the face of residents' opposition" to a 387,000 square-foot facility on 51.5 acres along I-75. "The site, now farmland, is less than 1,000 feet from the upscale Trails of Four Bridges subdivision. More than 1,000 residents from the neighborhood and others nearby had signed an online petition in opposition to the plan. Some objected to potential truck traffic on narrow roads; others didn't want the smells from the bakery or its 24-hour operation." IEDC offers Skally's Old World Bakery up to \$900,000 in performance-based tax credits, and Dearborn County will offer additional incentives . . . Amazon seeks to add more than 1,000 full-time workers (at \$12 per hour) to its Jeffersonville warehouse operations after already hiring 500 new FTEs since May . . . Cureatr, which offers a mobile healthcare coordination network, Care Transition Notifications™, that offers healthcare providers, payers, and care managers a notification whenever one of their patients receives care, plans to open a Midwest headquarters in Carmel with an unspecified number of employees . . . the *Greenfield Reporter* reveals that Indianapolis-based Foamcraft Inc., a foam fabricator with five facilities located across Indiana, is considering siting a new 60,000 square-foot facility on a 10-acre site near I-70 in Hancock County that would mean 25 new jobs with an average annual salary of \$26,350, and the potential for further expansion. The company seeks a 10-year local property tax abatement from the Hancock County Council . . . Indratech, a manufacturer of cushioning used in furniture and bedding for the recreational vehicle industry, receives a property tax abatement from the Elkhart City Council for a proposed \$3.8 million expansion in a newly designated economic revitalization area that will mean more than 20 new jobs with average salaries of more than \$40,000.

IN Transition

● Rep. Matt Lehman (R) is elected by the House Republican Caucus to serve as House majority floor leader. Rep. Sean Eberhart (R) also sought the post. Members should be assured that they will never be sent errant daguerreotypes of Rep. Lehman in his Civil War re-enactment regalia from his battlefield communication device.

□ Within the space of a week, Rep. Lehman was elected majority floor leader, shot a hole-in-one (witnessed by two of his House GOP colleagues), and was named one of two national "Legislators of the Year for the 2015 legislative session" by the National Association of Mutual Insurance Companies (he chairs the Property and Casualty Committee for the National Conference of Insurance Legislators).

- The Indiana Horse Racing Commission has made plans for an executive session and business meeting on Saturday, October 10 – the first such weekend meeting of the panel we can ever recall – and the legal citation for the executive session seems to suggest that it is to receive information and take action related to an employee . . . and from the Paulick Report horse racing industry website Thursday: “Shockingly, Joe Gorajec, who for nearly 25 years has been executive director of the Indiana Horse Racing Commission, has gotten word he is being fired this Saturday by his politically appointed superiors.” Long-time industry observer Ray Paulick notes that “The Indiana Horse Racing Commission, under Gorajec’s direction, has been, without question, a national leader in regulatory oversight on any number of fronts,” and “His pending dismissal . . . would be a huge blow to the integrity of Indiana racing and to national efforts to improve the sport’s public image,” and “a serious assault on the sport’s integrity, well beyond the borders of the Hoosier State.”

- “I have been given information that the commission is going to give me an ultimatum, and that is resign or be fired,” Gorajec told the Paulick Report after rumors of his demise began to circulate throughout the national horse racing community. “I have absolutely no knowledge of any wrongdoing on my part.” Alex Waldrop, president and CEO of the National Thoroughbred Racing Association (NTRA) tweeted Thursday afternoon, “@GovPenceIN Are you aware of this situation? IN commiss’n appears ready to take big step backward on integrity. Why?” In the mid-1990s as a Churchill Downs exec, Waldrop gained respect for Gorajec when Churchill, which became the owner of Hoosier Park, was the object of some “Tough Love” from Gorajec; at NTRA, he and Gorajec worked in tandem to attain national industry reform over the past few years.

- But Waldrop forgets that the director is hired and fired by commissioners, not by the governor . . . and we’re hearing that some of the commissioners – while not looking to backtrack on the critical integrity issues – would prefer to see a more conciliatory director who is just as eager to push and market the industry in a pro-growth direction as regulate the industry.

- At the Indiana Office of Technology (IOT), Dewand Neely moves up from his post as deputy CIO to becomes Chief Information Officer and director of IOT. Neely has been overseeing the IOT Seat Services program since 2013. Neely, one of the initial employees for the Indiana Office of Technology after working for the State since 2003, takes over the CIO role from Paul Baltzell, who is leaving to work for Zeke Turner’s Mainstreet in Carmel where he will seek to bring technology to bear on transforming healthcare. Baltzell, who has served as director of IOT since the beginning of the Pence Administration in 2013, becomes the third high-level state employee with key responsibilities for the MPH data hub program to join Mainstreet in the past three months.

- Johnson County’s Joe Kelsay, former state commissioner of agriculture, is reappointed by the U.S. Secretary of Agriculture to a second term on the National Dairy Promotion and Research Board through October 31, 2018.

IN the Lobby

- There’s a new D.C.-based firm providing “federal advocacy services for business sectors,” and it has a definite Hoosier flavor – uniting some second-generation names that you wouldn’t think of as natural allies (although some still recall the Bayh Tabbert & Capehart collaboration). Former U.S. Rep. Ben Quayle (R-AZ), teams up with Rashid Hallaway and Rob Hobart in Hobart Hallaway & Quayle Ventures, LLC (HHQ Ventures), a boutique advocacy and business advisory firm that opens its doors with 15 clients, including Duke Energy.

- Fort Wayne native Quayle, the son of former vice president Dan Quayle (R), was a one-term congressman from Arizona, following which he joined Clark Hill’s Government and Public Affairs practice group. Purdue graduate Hallaway most recently served as vice president of Evansville-based American Patriot Holdings, LLC, and AmeriQual Group, LLC, and spent eight years on the Senate staff of former U.S. Sen. Evan Bayh (D), advising the senator on national security matters. He is the son of Ann Moreau and Bill Moreau, former Birch Bayh and Evan Bayh staffers. Hobart formed his own lobbying firm, Hobart Ventures, in 2014, after working on appropriations matters in senior positions for three different members of Congress.

- In addition to lobbying, HHQ Ventures will support clients in the development of state political and policy strategies. With regard to business advisory services, partners have experience working with venture capital, private equity and major financial institutions, and HHQ Ventures will assist early and growth stage businesses with accessing government markets and advise and evaluate funding and procurement opportunities. Additional client service offerings will include policy, regulatory, and market risk analysis and domestic and international business development.

- Former Rep. Randy Borrer (R) parts company with Bose Public Affairs Group.

- Ron Breymer signs on for his second tour of duty as executive director of the Indiana Manufactured Housing Association-Recreation Vehicle Indiana Council, succeeding Mark Bowersox, who left the organization in September. The longtime industry lobbyist ran the group from 1986 to 1991.

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