IMA Indiana Manufacturers Association

2025 POLICY GUIDE

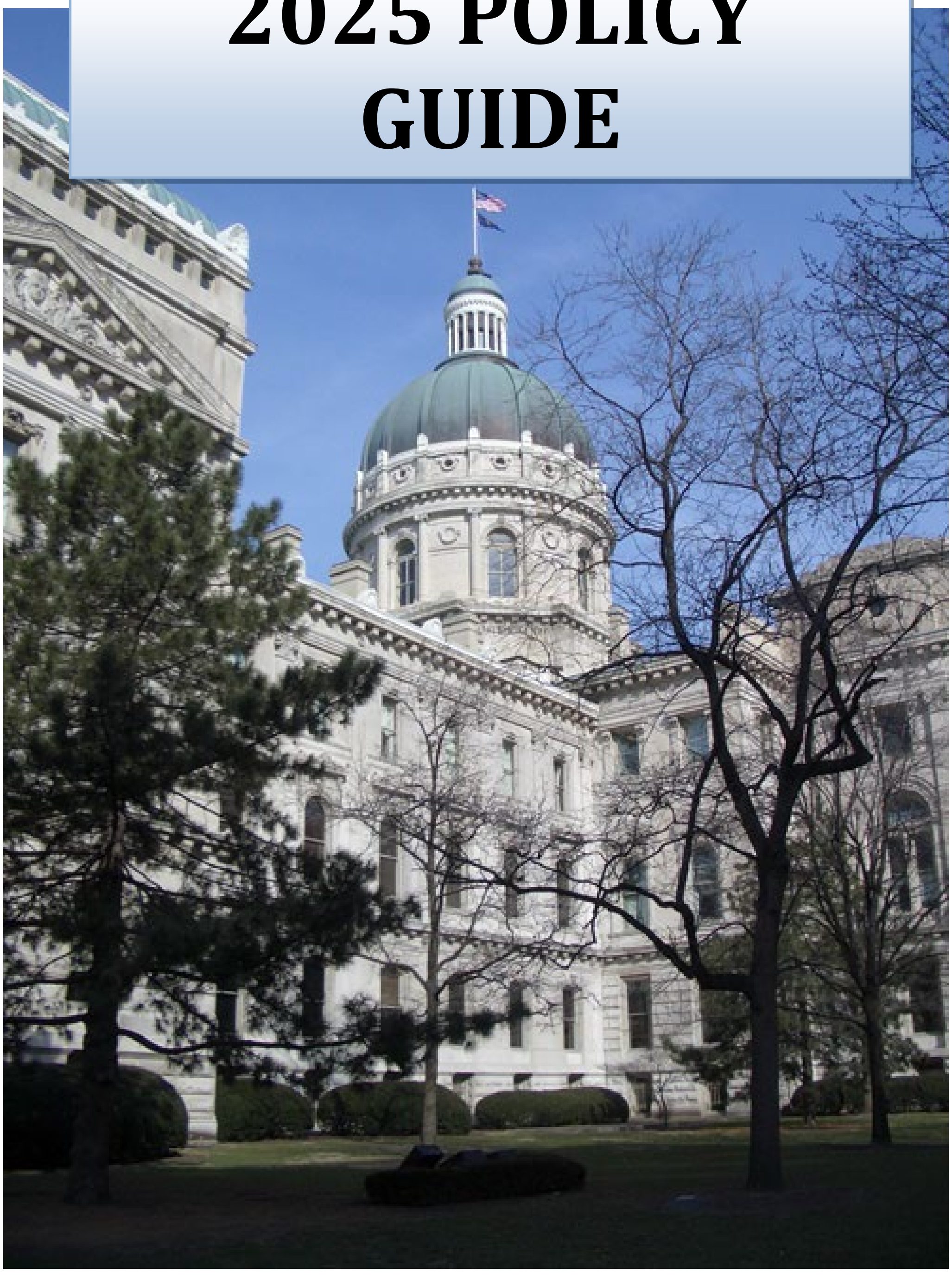

TABLE OF CONTENTS

FEDERAL TAX ISSUES

Support the Reforms Made Under the Tax Cuts and Jobs Act of 2017 and the One Big Beautiful Bill (OBBB) Act of 2025

The Tax Cuts and Jobs Act (TCJA) of 2017 was the most wide-ranging reform of the federal tax code in decades. Eight years later, the One Big Beautiful Bill (OBBB) Act made permanent many pro-manufacturing provisions and corrected problematic provisions from the TCJA. The passage of these pro-growth federal tax laws provides much needed tax competitiveness with other economies while providing increased dollars for businesses to invest. The gains made under these landmark pieces of legislation should be maintained.

Permanent Expansion of Bonus Depreciation for Certain Property

Issue/Status: The TCJA increased bonus depreciation to 100% for property acquired and placed in service after Sept. 27 2017. Eligible property now only has to be "new to you" rather and the acquisition of new property. The TCJA required, on January 1, 2023, that bonus depreciation begin phasing down 20% each year before being eliminated in 2027. This provision was eliminated in the OBBB and now bonus depreciation is permanent.

***IMA Position/Solution*:** IMA supports permanent bonus depreciation. Bonus depreciation is a valuable cash flow tool for IMA members. The intent of the deduction is to accelerate the recovery of investment costs, thereby encouraging new investment and promoting economic expansion.

Maintain Accelerated Cost Recovery

Issue/Status: Under current law, a taxpayer may recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction with respect to tangible property for a tax year is determined under the modified accelerated cost recovery system (MACRS). However, in certain circumstances – such as with respect to corporate taxpayers subject to the alternative minimum tax (AMT) – property must be depreciated under the alternative depreciation system (ADS), which requires longer recovery periods and the use of the straight-line depreciation method.

Problem: Recent federal tax reform proposals repeal MACRS recovery periods, and institute longer recovery periods and straight-line depreciation.

IMA Position/Solution: IMA supports an accelerated cost recovery system, such as MACRS. An ideal system would allow manufacturers to expense capital equipment in the tax year purchased because capital investment is a key to economic growth, job creation, and competitiveness. The most effective way to spur business investment is through a strong capital cost-recovery system. Cost recovery is not merely timing. Manufacturers both large and small take into account the tax impact of cost recovery mechanisms on project cash flows in making investment decisions.

Maintain Permanence of the Section 179 Threshold

Issue/Status: An expense deduction is provided to taxpayers who elect to treat the cost of qualifying property, called section 179 property, as an expense rather than a capital expenditure. In other words, a U.S. company can elect to deduct as an expense, rather than to depreciate, the cost of new or used tangible personal property placed in service during the tax year in the taxpayer's trade or business up to a specified amount. Section 179 applies to many of the same assets as bonus depreciation but also includes property bonus depreciation does not cover, such as HVAC, fire protection, and alarm systems, and off-the-shelf software.

Problem: The maximum deduction and investment limit thresholds have changed often the last 10 years. For example, as part of the American Taxpayer Relief Act of 2012, retroactive for tax years beginning in 2012, the maximum expensing amount under IRC 179 was increased from $139,000 to $500,000. However, for tax years beginning in 2014, the maximum expensing amount dropped to $25,000 and the investment limitation to $200,000. Thankfully, the Protecting Americans from Tax Hikes Act of 2015 made the Sec. 179 deduction threshold permanent at the $500,000 and the maximum investment limitation at $2 million. The TCJA further expanded the deduction threshold to $1,000,000 while expanding the scope of eligible investments. The OBBB also expanded Sec. 179 expensing to allow $2.5 million of immediate deductions with a phaseout threshold beginning at $4 million and a full phaseout at $6.5 million, for property placed in service in 2025. These thresholds will be indexed for inflation beginning in 2026.

IMA Position/Solution: Small business expensing gives business owners the ability to maximize investment in their companies during years when they have positive cash flow. This provides an incentive for small business owners to reinvest in their businesses, which fuels expansion, growth, and jobs. It also simplifies record-keeping and paperwork. IMA supports maintaining the Section 179 maximum expense deduction thresholds passed in the OBBB.

Maintain the Credit for Increased Research Expenditures

Issue/Status: The research credit is generally allowed for expenses paid or incurred for qualified research. This research must be undertaken for discovering information that is technological in nature, and its application must be intended for use in developing a new or improved business component of the taxpayer. In addition, substantially all of the activities of the research must be elements of a process of experimentation relating to a new or improved function, performance, reliability, or quality. The research credit equals 20 percent of the excess (if any) of the qualified research expenses for the tax year over a base amount (unless the taxpayer elected an alternative simplified research credit). In lieu of the 20 percent research credit, an alternative simplified research credit may be claimed. The alternative simplified research credit is equal to 14 percent of qualified research expenses that exceed 50 percent of the average qualified research expenses for the three preceding taxable years. The 2012 Taxpayer Relief Act retroactively extended the research credit for two years so that it applied for amounts paid or accrued before January 1, 2014. The 2015 Protecting Americans from Tax Hikes Act made the research credit retroactive to 2014 and made it permanent.

Problem: Administration of the credit for increased research expenditures has historically been a severe problem on two levels. First, while the policy direction supplied by Congress through enactment of the credit has been clear, historically the Internal Revenue Service has attempted to implement a narrow view of "qualified" expenses. Recent changes allowing more expenses to qualify as research expenditures has simplified to a certain extent what is otherwise and unnecessarily complex administration of this tax credit.

IMA Position/Solution: IMA strongly supports maintaining the credit and increasing the Alternative Simplified Credit to 20 percent. Congress should continue to recognize the important role of research and development (R&D) investment in the growth of U.S. jobs and innovation. The goal is for the United States to retain and attract global R&D activities. The certainty of a strengthened, permanent R&D provision would enhance the country's attractiveness to R&D investment.

Maintain Research and Development Expense Deduction

Issue/Status: For nearly 70 years the federal tax code has recognized the importance of research and development by allowing businesses to fully deduct their R&D expenses in the same year. In 2022, businesses were required to amortize or deduct these expenses over a period of years, making R&D more costly to conduct in the U.S. This change was made as part of the Tax Cuts and Jobs Act of 2017. Thankfully, in 2025 the OBBB Act repealed this change and allowed those R&D expenses to be fully deducted in the first year.

Problem: Before its repeal, limiting R&D tax breaks cost the economy well-paying jobs and reduced future innovation-directed R&D. When accounting for the spillover effect from R&D spending, nearly three times as many as those direct R&D jobs were affected. One study from the National Science and Technology Foundation found that for every $1 billion in R&D spending, 17,000 jobs are supported in the U.S. China currently provides a super deduction for R&D expenses up to an extra 100% of eligible R&D expenses in addition to actual R&D expenses. At a time of increasingly fierce global competition for research dollars, tax policy should strive to make every R&D dollar be spent in the U.S.

IMA Position/Solution: Maintaining U.S. R&D competitiveness is critical to the overall health of the U.S. economy and the tax base. The IMA supports the version of the R&D expense deduction as passed in the OBBB.

Maintain the LIFO Method of Accounting for Inventories

Issue/Status: The Last-In-First-Out (LIFO) method of accounting for inventory has been a fixture in the tax code since 1939. It is used to manage the costs of inflation by assuming the most recently purchased goods (the last ones in) are sold first and the oldest units are left in ending inventory. When unit costs are rising, LIFO produces lower income and a lower inventory valuation than the First-In-First-Out (FIFO) method, which translates into lower income taxes. The conformity rule of LIFO (IRC § 472(c)) requires taxpayers who use LIFO on the income tax return to also use LIFO to calculate inventory and cost of goods sold for the financial statements.

Problem: Recent federal tax reform proposals repeal the use of the LIFO inventory accounting method. Additionally, International Financial Reporting Standards (IFRS) does not permit LIFO for book accounting.

IMA Position/Solution: IMA supports the LIFO accounting method and opposes recent attempts to repeal LIFO. Repeal is an attempt at a tax reporting uniformity that will increase the taxes of many Indiana manufacturers. For those manufacturers converting to IFRS for financial reporting purposes, IMA supports an administrative exception to the LIFO "conformity rule" to permit LIFO for tax purposes, irrespective of IFRS conversion. In other words, the IMA urges the U.S. Treasury Department to relax the LIFO conformity rule and permit the use of FIFO for financial reporting purposes and LIFO for tax reporting purposes. In the alternative, if the use of LIFO is repealed, IMA supports a longer recapture period of a company's LIFO reserve, such as up to a 10-year period, at the taxpayer's discretion.

International Tax

Issue/Status: The TCJA made significant changes to the US tax code impacting foreign earnings. Following its passage the US moved away from a worldwide system where the United States taxes all income of U.S.-headquartered companies, including income earned abroad toward a territorial system, a country that taxes only the income the corporation generated in that country, leaving other countries to tax the income generated elsewhere. The TCJA does this by allowing a 100% exemption on dividends from foreign subsidiaries. The TCJA also include a repatriation incentive for pre-1986 accumulated overseas profits by imposing a new onetime transition tax of 15.5 percent for liquid assets and 8 percent for physical assets.

The shift to the territorial system under the TCJA was limited by the inclusion of anti-base erosion provisions. These TCJA provisions were again changed by the OBBB, which maintained the shift ot a territorial system and moderated many of the base erosion provisions. A new tax on Global Intangible Low-Taxed Income (GILTI) was established apart from traditional Subpart F income, in the TCJA. The OBBB renamed GILTI, Net CFS Tested Income and made permanent a 12.6% tax rate, which is lower than the post 2025 tax year rate under the TCJA. This taxable income can be offset by foreign tax credits and, for corporate taxpayers, a deduction up to 50% of its Net CFS Tested Income. Another provision, Base Erosion Anti-Abuse Tax (BEAT), is a 10 percent minimum tax to stop companies from shifting profits overseas through "excessive" deductible payments. The BEAT was scheduled, under the TCJA, to increase to 12.5 percent after 2025, but the OBBB made the rate permanent at 10.5%.

Problem: The move from a worldwide to a territorial system benefits Indiana manufacturers by eliminating the double-tax burden and alignment with international norms.

The follow up changes by the OMBB However, the scope and complexity of this transition as well as the complexity of the mechanisms themselves make the implementation and enforcement of the international tax provision extremely important. Similarly, the workings of the various anti-base erosion provisions and their impact on individual manufacturers should be closely monitored and problems addressed. One example is that the TCJA currently includes R&D reimbursements paid to foreign affiliates as "base erosion payments" potentially creating a disincentive to conduct R&D in the US.

IMA Position/Solution: IMA believes that international tax law changes should be made that promote U.S. economic growth and secure U.S.-based jobs through a territorial tax system.

Territorial tax systems are associated with greater inflows of foreign investment, which boosts firm-wide productivity and opens new markets for selling – all of which benefits the U.S. Adopting a tax system that is comparable to tax systems in other industrial countries is critical to the ability of Hoosier and other U.S. manufacturers to compete in the global marketplace. The IMA supports:

- **Non-discriminatory Anti-base Erosion Rules:** While we recognize the need for anti-base-erosion rules, such rules should not disfavor U.S.-domiciled companies against their foreign competition. Furthermore, the anti-base erosion rules put into place should be changed if unwanted consequences are found, such as dis-incentivizing R&D activities.

- **Administrative Ease**: It was hoped that the enactment of a territorial system would simplify U.S. tax law by eliminating several complex tax rules. Unfortunately, a more complex system has been put in place. Future reforms should look for more simplification.

Reduce Current Tax Rates Paid by Individual Owners of Pass-Through Entities

Issue/Status: The Tax Cuts and Jobs Act slightly reduced the top tax bracket from 39.6% to 37% and increased the income thresholds with automatic adjustments for inflation. The TCJA left the long-term capital gains tax rate at 20 percent for those in the 37%, 35%, 32% and 24% tax brackets, and the 15 percent rate has remained for taxpayers in the 22%, 12% and 10% tax brackets. However, under the Affordable Care Act, a new, 3.8 percent surtax on investment income earned in households and a 0.9 percent increase in the Medicare payroll tax for those making at least $250,000 ($200,000 single) became effective on January 1, 2013. These tax increases are offset thought a provision in the TCJA providing a 20% deduction for qualified business income received from a pass-through entity.

Problem: The new upper tax bracket of 37% percent represents a tax increase on small businesses organized as pass-through entities (particularly, manufacturers organized as S corporations) whose shareholders must report the income and deductions on their own income tax returns. Additionally, the surtax on investment income and increase in the Medicare payroll tax are additional tax increases that remove dollars out of the private economy and into the hands of the federal government

IMA Position/Solution: IMA strongly opposes tax increases and supports further reductions in the individual tax rates for about two-thirds of Hoosier manufacturers structured as an S corporation or some other form of "pass-through" entity. While the perception may be that by taxing income of the highest tax brackets only the very rich, the reality is that the changes will increase taxes applicable to business income, even if that income is retained and reinvested by the business and not paid out via wages or distributions.

Support Lowered Federal Corporate Tax Rate

Issue/Status: The TCJA lowered the federal corporate tax rate from 35 percent to 21 percent. The 35 percent federal corporate tax rate was the highest in the advanced industrialized world. The 35 percent federal corporate tax rate reduced the return on investments, discouraged savings, and reduced aggregate investment. Lowering the corporate tax rate was a major benefit of the TCJA that was maintained by the OBBB.

IMA Position/Solution: The IMA supports the maintenance of the lowered corporate tax rate.

Repeal the Affordable Care Act Taxes

Issue/Status: The passage of the Affordable Care Act in March 2010 brought with it a myriad of tax increases and new taxes to the Internal Revenue Code in order to fund an employer mandate to provide minimum essential coverage, and an employer mandate to purchase health insurance.

Problem: The following is a list of the various taxes related to the Affordable Care Act:

- *Medicare Tax on Wage Income*: The 0.9 percent surtax on wage income above $200,000 for individuals and $250,000 for couples. The employee portion of the Medicare payroll tax rate for high-income earners increases by 0.9 percent, from 1.45 percent to 2.35 percent, effective January 1, 2013. Employers are responsible for collecting the additional withholding. Small business owners who file as pass-through entities are affected. The tax is not indexed for inflation, so the number of businesses paying the tax will increase each year.

- *Medicare Tax on Investment Income*: An additional 3.8 percent Medicare tax on investment income applies to income from capital gains, interest, dividends, annuities, royalties and rent earned by individuals with income above $200,000 and couples with income above $250,000. This tax will also affect small businesses filing as S corporations and other pass-through entities. The tax is not indexed for inflation, so the number of businesses paying the tax will increase each year.

IMA Position/Solution: IMA supports the repeal of each of these taxes as counter-productive and harmful to economic growth. Tax increases and the creation of new taxes remove dollars from the private-sector economy. More specifically, a tax on investment income will deter investments, which is harmful to economic growth and productivity.

Repeal of the Federal Estate, Gift, and Generation-Skipping Transfer (GST) Tax

Issue/Status: The federal estate, gift, and GST taxes were designed to form a unified transfer tax system on the transfer of property at death (estate tax), during life (gift tax), and on transfers that skip a generation (GST tax). The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) phased-out the estate and GST taxes for the estates of decedents dying in 2010 and beyond. In 2010, President Obama and Congress set the exemption at $5 million per person with a top rate of 35 percent for the estate, gift, and GST taxes through 2012. The American Taxpayer Relief Act of 2012 permanently extended the federal estate tax rate to 40 percent for the estates of decedents dying in 2013 and thereafter. The gift tax rate is also extended to 40 percent for gifts made in 2013 and beyond.

The TCJA doubled the base exemption to $10,000,000 for tax years 2018 through 2025. The exemption is indexed for inflation. These provisions were set to expire in 2026 resetting the exemption to 2017 levels. The OBBB made permanent the base exemption at $15,000,000, which will still be indexed to inflation.

Problem: Taxes triggered by death and imposed on the value of assets are economically counterproductive. They assume a disproportionate role in financial planning and overshadow more fundamental decisions about the use of assets. Pending estate, gift, and GST taxes are artificial disincentives to further investment in an otherwise viable business, increasing the appeal of tax- or investment-reducing alternatives such as liquidation, downsizing, divestiture, or retirement. This is especially true when an estate's value is about to surpass any exemption equivalent amount. Older individuals owning businesses, when weighing ongoing investment risks and marginal rates of return in light of tax factors, see less value in maintaining these taxable enterprises. They may instead decide to reduce risk and preserve capital, by shifting resources, liquidating assets, and using tax-avoidance techniques such as insurance policies, gift transfers, trusts, and tax-free investments. The rights lie with the deceased to dispose of his or her wealth as he or she sees fit, whether that disposition be in the form of a charitable gift, a check to the government, or a gift to a chosen heir.

***IMA Position Solution*:** The federal estate, gift, and GST taxes should be repealed.

STATE AND LOCAL TAXATION

The Indiana Manufacturers Association has developed this statement of policy on Indiana tax and fiscal matters. The intent of the policy is to provide a series of goals and objectives for the modification of state and local tax structures.

It is the overall position of IMA that any change to the tax structure which results in additional revenue for state or local government should be considered only after a full review of government spending has occurred and every effort has been made to curtail government spending.

The following policies are based on the IMA's fundamental belief that:

- The tax code, as well as the regulations which implement that code, should be designed to promote economic growth not just raise revenues.
- The tax code/regulations should enhance the state's competitive position relative to the global environment.
- The tax code/regulations should remain compatible with federal tax concepts and definitions.
- The tax code/regulations should provide ease of compliance.
- To the extent possible, the tax code should be comprised of broadly based, low-rate taxes.
- The tax code/regulations and administration thereof should be simple, transparent, neutral, and stable.

OVERALL OBJECTIVES

The primary objective of IMA is to institute a tax structure which:

1) Is less property tax dependent;
2) Positions Indiana to have a more competitive tax climate for economic growth; and
3) Fosters incentives to create and retain high paying jobs.

Replace Double-Direct Test with Single Direct Test for Sales & Use Tax Exemptions

***Issue/Status**:* In Indiana, purchases involving manufacturing machinery, tools, and equipment are exempt from the 7 percent state sales tax if the person acquiring that property acquires it for "direct use in the direct production … of other tangible personal property." IC 6-2.5-5-3; 45 IAC 2.2-5-8. This standard is known as the "double direct" test. This standard requires the property in question be "essential and integral" to the production process in order to be exempt from the sales tax. In 2015, state law was amended to specifically include material handling equipment as meeting the "double direct" test.

***Problem**:* According to research conducted by the Indiana Department of Revenue, Indiana is the only state in the U.S. that applies a "double direct" test to determine whether the purchase of manufacturing equipment is exempt from the sales tax. Thirty-six states apply a "single-direct" or similar test; five states and the District of Columbia offer no tax exemption; in California, manufacturers may obtain a partial exemption on certain manufacturing equipment purchases; two states tax the purchases at a 1.5 percent sales tax rate; and five states do not impose a sales tax at all (however, Alaska allows local jurisdictions to impose sales taxes). The confusion of a unique "double direct" test leads to increased litigation and disputes over what type of equipment qualifies for the exemption.

IMA Position/Solution: The sales tax, theoretically, is a tax on final consumption by households with no taxation of business purchases. Council on State Taxation (COST), *What's Wrong With Taxing Business Services?*, April 4, 2013. As explained by COST, the taxation of business inputs (products that businesses buy so that they can make other things) should not be done as it violates several tax policy principles (economic growth, efficiency, equity, simplicity, and transparency) and causes a number of economic distortions; specifically, "tax pyramiding."

Indiana University professor John Mikesell agrees with COST that if a business purchases an input, that purchase should not be taxed at all. It has been estimated by Professor Mikesell and COST that around one-third (1/3) of the $6.9 billion in sales tax revenue generated annually in Indiana, or about $2 billion, is made up of purchases by businesses.

Even though the purchase of business inputs should not be taxed, the political reality is that such a policy position is unlikely to ever be approved by the General Assembly or governor due to the impact on the state General Fund, and the perception that business would be receiving a large "tax break" if implemented. Thus, a reasonable and less expensive alternative to exempting the purchase of all business inputs is to repeal the "double direct" test and replace it with a "single direct" test.

To craft a single direct test, Indiana could use a similar tax exemption standard currently used for taxpayers providing for-hire transportation services. That standard reads: "The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is *directly used* in the rendering of public transportation of persons or property." IC 6-2.5-5-27; 45 IAC 2.2-5-61(a).

While implementation of a single direct test will reduce sales tax revenue to the state General Fund, it will save the Department of Revenue time and resources by reducing the number of sales and use tax audits of taxpayers. Such a change will also save time and money for taxpayers because it will simplify tax compliance, and allow taxpayers to no longer need to dedicate resources to tracking exempt versus taxable purchases. Importantly, statute for this exemption should be as specific as possible as to what is "directly used" in production and to cover all the production process from equipment used to prepare raw materials to packaging equipment. Furthermore, equipment used for producing a recycled byproduct that is also sold to other manufacturers should be exempt. Lastly, a change from a double direct test to a single direct test would exempt more business purchases from the sales tax, thereby encouraging business expansion and investment and decreasing business costs in Indiana.

Eliminate the Personal Property Tax on Production Tools, Machinery, and Equipment

Issue/Status: Thirty-nine states tax tangible personal property in some capacity. ~~Seven~~ Eleven states have either never taxed personal property or have eliminated personal property taxes altogether: Delaware, Hawaii, Illinois, Iowa, Minnesota, New Hampshire, New York, North Dakota, Ohio, Pennsylvania, and South Dakota. Seventeen of the 39 taxing states partially tax personal property or assess it at a different rate or ratio than real property, including manufacturing-intensive Louisiana and South Carolina and neighboring states Kentucky and Michigan (phasing out the tax for small businesses and eligible manufacturing equipment by 2024).

Some states specifically exempt manufacturing machinery and equipment from the personal property tax:

<u>Wisconsin</u>: Machinery and equipment used directly and exclusively in the manufacturing process is exempt. WIS. STAT. § 70.11(27).

<u>Connecticut</u>: Manufacturing machinery and equipment, including machinery and equipment used in biotechnology, is exempt. CONN. GEN. STAT. § 12-81(76).

Maryland: Machinery and equipment used directly in manufacturing is exempt from state property tax in Maryland, but is subject to tax in five counties. MD. CODE ANN. TAX-PROP. § 7-225.

Massachusetts: Most personal property of a manufacturing corporation is exempt. MASS. GEN. LAWS ch. 59, § 5, cl. 16(3).

Rhode Island: Machinery and equipment used exclusively in the manufacturing process acquired after 1974 is exempt. R.I. GEN. LAWS § 44-3-3(22).

Indiana is the most manufacturing-intensive state in the U.S. According to the U.S. Bureau of Economic Analysis, 30 percent of our state's economic output is generated each year by Hoosier manufacturers -- #1 in the nation. Seventeen percent of all jobs (and 20 percent of private-sector jobs) are in the Hoosier manufacturing sector -- #1 in U.S. Twenty-three percent of the total compensation paid to Hoosiers is paid by the manufacturing sector -- #1 in U.S. Despite this manufacturing intensity, Indiana has one of the highest effective property tax rates on commercial and industrial equipment in the country.

Indiana Businesses pay nearly 55% of all property taxes in the state. In 2020, Indiana businesses paid over $300 million more in personal property taxes than they did in 2011. This was a 28% increase in a decade and was the second highest increase of any property classification following commercial apartments.

Problem: For Indiana, taxing production machinery and equipment is a highly counter-productive manner of raising revenues because our state's economy is the most manufacturing dependent in the nation. Indiana penalizes further investments in manufacturing machinery and equipment by taxing those investments.

Maintaining the Issue/Status quo while neighboring states provide personal property tax relief is a risk to Indiana's business climate. However, elimination of the tax in Indiana would result in an estimated $800 million tax cap loss to local governments and $500 million shift to other classes of property.

IMA Position/Solution: The personal property tax as it applies to production machinery and equipment should be eliminated. "Production machinery and equipment" can be defined as personal property "used in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property." A repeal of the personal property tax on manufacturing and agricultural machinery and equipment has a precedent in law as purchases of such personal property are mostly exempt from the sales and use tax.

Based upon our estimates using net assessed value and net tax by property class data from Legislative Services Agency, elimination of the property tax on production machinery and equipment would result in a $260 million tax cap loss to local governments and $140 million shift to other classes of property.

However, this static analysis does not consider that such a tax reduction can decrease business costs, add to profitability, and encourage firm location, expansion, and new investment in Indiana, which would add new sources of tax revenue to local governments in the forms of new employee incomes, newly-built or expanded real estate, and new equipment.

Methods of raising replacement revenues should be guided by the principles set forth in this policy document.

Maintain Phaseout of 30% Minimum Valuation Floor

Issue/Status: Indiana is one of only 13 states to impose a tax on personal property using an adjusted cost approach, where the assessed value is determined using an amount equal to some form of cost less depreciation. Indiana requires that property be assigned to one of five depreciable life pools and then the cost of the property is adjusted according to the age of the property within each pool. Indiana, like other Adjusted Cost States, also imposes a minimum valuation floor by prohibiting an asset from being depreciated to zero in each pool – ranging from 5 to 20 percent.

Indiana Administrative Code also provides that "the total valuation of a taxpayer's assessable depreciable personal property in a single taxing district cannot be less than thirty percent (30%) of the adjusted cost of all such property of the taxpayer." 50 IAC 4.2-4-9. In other words, if the sum of the total true tax value of all a taxpayer's assets in the taxing district is less than 30 percent of the total adjusted cost, then the total valuation is adjusted upward to that 30 percent figure, effectively taking away depreciation otherwise granted.

The "30 percent floor" was removed in SEA 1 - 2025 for personal property purchased after January 1, 2025. Indiana personal property taxpayers will now receive additional depreciation once there equipment ages to the minimum valuation based on the appropriate pool.

IMA Position/Solution: The 30 percent floor is a problem for Hoosier manufacturers for several reasons. First, it is an arbitrary figure that takes away depreciation otherwise granted in the deprecation pools. Second, it frustrates economic development by artificially inflating the taxable value of business personal property. Third, the 30 percent floor over-burdens older industries that keep machinery and equipment active for several years beyond their life expectancy, such as foundries and primary metal manufacturers. Fourth, the 30 percent floor diminishes the effects of otherwise permitted deductions under the law.

The 30 percent minimum valuation floor should be allowed to fully phase out as new equipment is no longer subject to this second minimum valuation. Personal property should be depreciated in accordance with the five asset pools.

Methods of raising replacement revenues should be guided by the principles set forth in this policy document.

Funding Alternatives to Provide Personal Property Tax Relief (Local Government Reform)

Issue/Status: Indiana has 2,709 local units of government. Indiana is one of 10 states with three layers of general purpose local governments. The other 40 states only have one or two layers, and most do without township-level government altogether. Of these 10 states, Illinois has the highest concentration of population with exactly three layers of general purpose government at 60 percent and Indiana is second highest with 49.7 percent. No other state has more than 14.2 percent.

Problem: Indiana has too many layers of local government. The Ball State Center for Business and Economic Research in January 2009 found that very significant cost savings associated with the type of government restructuring recommended by the Kernan-Shepard "Streamlining Local Government" report could range from $400 million to $622 million per year.

IMA Position/Solution: Require local government reforms and consolidations, including the elimination or reduction in township government and other recommendations from the Shepard-Kernan report. Local units of government in Indiana currently have the legal mechanisms in place to consolidate operations and save taxpayer dollars under the Government Modernization Act.

Funding Alternatives to Provide Personal Property Tax Relief (Local Option Income Taxes)

Issue/Status: Each of Indiana's 92 county governments has adopted a local income tax (LIT) that is some combination of at least one of seven forms legacy local income tax rates: County Adjusted Gross Income Tax (CAGIT), County Option Income Tax (COIT), and County Economic Development Income Tax (CEDIT). Each of these taxes was enacted at different times with tax proceeds dedicated to specific purposes. The fourth type of LOIT was enacted in 2000 to allow COIT counties to offer additional Homestead Credits for supplemental tax relief. The fifth, sixth, and seventh forms of LOIT were approved in 2007 and 2008 to either cap property taxes, reduce property taxes, or provide additional revenues for public safety. Tax rates on each of these seven LOITs are capped. In 2025, the legislature adopted a new municipal only local income tax rate allowing for cities and towns to raise income taxes on their own. Starting in 2028, all existing LIT rates will expire and must be replaced with the new post 2025 property tax reform structure. All property tax relief rates, including levy freeze rates, will also expire. All cities and counties will be required to adopt a new LIT rate under the new LIT structure during the 2027 budget process.

With the new municipal rate and the potential increases available to county governments nearly $4 billion in excess income tax capacity is available to local units of government.

Problem: As stated above in various studies, Indiana has one of the highest effective property tax rates on commercial and industrial equipment in the country.

IMA Position/Solution: IMA supports the concept of Indiana becoming less property tax dependent. As a result, IMA supports local income tax options that offset property taxes. Such proposals, however, need to be administratively workable and compatible with IMA's overall tax objectives. Moreover, it should be recognized that the majority of small businesses pay taxes through the individual income tax. Uncapped or excessive local option income taxes may have an adverse impact on local job growth as these businesses are further taxed.

IMA opposes applying LITs to C corporations as administratively unworkable and as a tax increase on job creation and investment that will increase the cost of doing business in Indiana. Moreover, local spending practices and government efficiencies should be reviewed prior to any additional taxes being imposed.

Lastly, IMA supports the simplification and streamlining passed in 2025 to make the formerly complex local income tax system more understandable and therefore more accountable to taxpayers.

Funding Alternatives to Provide Personal Property Tax Relief (Local Option Homestead Deduction Adjustments)

Issue/Status: Homestead properties receive substantial deductions from assessed value that do not apply to other types of properties, such as the $45,000 homestead deduction and an additional 25 percent or 35 percent supplemental homestead deduction. The overall effect of this system over time is to shift property taxes from lower tax capped properties (homesteads) to higher tax capped properties (commercial and industrial real and personal property).

The March 2014 study by the Minnesota Center for Fiscal Excellence and the Lincoln Institute of Land Policy, the same study that showed Indiana rural and urban industrial property tax rates to be among the highest in the country, shows Indianapolis has the 38th highest urban homestead effective property tax rates in the U.S. – significantly lower than the national average. North Vernon, Indiana is the 38th highest tax rate among rural homestead effective tax rates in the country – significantly lower than the national average.

Problem: As described above in various studies, Hoosier businesses pay a disproportionate share of the property tax burden in Indiana.

IMA Position/Solution: IMA supports allowing county and city/town governments to reduce, at their option, the $45,000 homestead and 25 percent / 35 percent supplemental homestead deductions offered to homeowners in order to increase the assessed valuation in their jurisdiction, which reduces property tax rates and tax cap losses for local units of government, and provides flexibility to the localities to offer personal property tax relief to manufacturers.

A disproportionate share of the property tax burden is currently paid by business. Tax caps are effective taxpayer protections making the homestead and supplemental deductions largely duplicative, expensive, and unnecessary. With Indiana homestead properties enjoying substantial assessed value deductions and the 1 percent tax cap, the property tax burden has swung too far against business real and personal property taxes.

Funding Alternatives to Provide Personal Property Tax Relief (Statewide Sales Tax on Services)

Issue/Status: Indiana's efforts to reduce real property taxes and find funding alternatives for those taxes goes back several decades. The 2008 tax reform legislation raised the sales tax 1 percent, put property tax caps (1 percent, 2 percent or 3 percent) on various classes of property into the state constitution, and provided that future increases in local government funding was to come through the enactment of Local Option Income Taxes (LOIT).

Despite these reforms, local governments are still dependent on personal property taxes for a significant share of their property tax revenue. Additionally, our economy is becoming more service-based and the 7 percent state sales and use tax does not apply to most service transactions. In 1965, 42 percent of Indiana's gross domestic product was directly attributed to manufacturing. Today, that number is 30 percent. In comparison, the Finance, Insurance, Real Estate, and Services (e.g., education, health care, professional/business, arts/entertainment, accommodation) industries increased from 17 percent of the state's GDP in 1965 to 34 percent today.

According to a Federation of Tax Administrators study in July 2007, Indiana taxes 24 of 168 services. Illinois taxes 17, Michigan 26, Kentucky 28, Ohio 68, Wisconsin 76, and Iowa taxes 94 of 168 services.

Problem: As described above in various studies, Indiana is the most manufacturing-intensive state in the country yet has one of the highest effective property tax rates on commercial and industrial equipment in the U.S.

IMA Position/Solution: Efforts to reduce personal property taxes, as advocated for above, should continue. To address the cost impact to local governments of reducing personal property taxes, expansion of the sales and use tax to services should be considered but only as a last resort after efforts at local government efficiency and other measures discussed above have been considered and utilized to their fullest extent. The money collected by the state would then be sent to local units – like how current LOIT dollars are disbursed to local units from the state – to cover the cost to local governments of reducing personal property taxes.

If expanding the 7 percent state sales and use tax base to include service transactions is necessary to fund personal property tax relief, the basic nature of the sales and use tax should not be changed. That is, the tax should be borne by the ultimate consumer of the service; and services utilized in the production of goods must be exempt. Moreover, current provisions limiting the application of the sales tax to goods directly used in the manufacturing process (including utilities) should be exempt. IMA strongly opposes any efforts to tax business-to-business services.

Lastly, in addition to reimbursing local governments for personal property tax relief, any additional dollars raised from expanding the sales tax base to services should be used to reduce the current 7 percent sales and use tax to at least 5 percent.

Oppose Taxation of Earnings Not Connected to Indiana

Issue/Status: Since 2011, Indiana has apportioned income from the sale of tangible personal property based on a single sales factor, with the numerator being Indiana sales and the denominator being total sales. Indiana uses a destination test as the general rule for sourcing receipts in computing the sales factor for sales of tangible personal property. An Indiana manufacturer's sales are included in the numerator of the sales factor if:

1. The property sold is delivered or shipped to a purchaser within Indiana; or
2. The property is sold to the U.S. government and the property is shipped from Indiana.

Indiana is a separate return state; meaning that each entity files its own Indiana adjusted gross income tax return. Indiana does offer a consolidated return election which allows related entities (generally, following the federal income tax definition) to file together so long as each entity included in the Indiana return has income derived from sources within Indiana. Unlike some states, Indiana does not require combined reporting. Combined reporting is somewhat similar to consolidated reporting except that it applies to entities that comprise a "unitary group" which may include entities that do not have any income derived from sources within Indiana, thereby taxing income earned outside Indiana. Whether a group of entities comprise a unitary group is based on common law factors, and this determination is inherently subjective and can be highly disputed. Indiana has embraced a tax policy that promotes certainty in tax reporting, fairness in taxing income earned in Indiana and not elsewhere, and a system that incentivizes businesses to locate and expand in Indiana. The "throwback rule," a rule which taxed, in Indiana, sales made into other states or countries simply because the sales were not taxable in those other jurisdictions, was repealed in 2015 because Indiana understood that the earnings from those out-of-state sales should not be a windfall to the State and an added tax burden on companies locating in Indiana.

Problem: Many states have implemented combined reporting or the throwback rule as a mechanism to increase corporate income tax collections and to combat negatively perceived tax planning activities around business relationships.

IMA Position/Solution The throwback rule was repealed in 2015. Part of the reason was that the logistics industry was unfairly hurt by the throwback rule, and other states were trying to attract these businesses to their states, when their states did not have the throwback rule. The unfairness of the throwback was also a factor. This repeal may have reduced corporate tax collections in Indiana, and there could be an effort to reinstate the throwback rule. When the throwback rule was repealed, the fiscal impact was found to be "indeterminable" by Legislative Services Agency (LSA), and it is difficult to quantify given its impact on location, expansion, and business structuring decisions since the rule was repealed, as well as the economic impact of a change in the law on future such decisions. The throwback rule did not fairly measure a corporation's business activities in Indiana, and its repeal encourages manufacturers to remain, expand, and locate in Indiana. Indiana made the right decision to repeal it in 2015.

Combined reporting has been proposed at various times in the legislature, most recently in 2016. This is a complex exercise as combined reporting can come in a variety of forms. Because of this complexity, as well as the inherent subjectivity, the tax implications and fiscal impact to the state are difficult to predict. Businesses have made long term decisions based on the stability of Indiana's favorable and more objective tax structure and a shift from separate/consolidated reporting to forced combined reporting would undoubtedly have significant negative consequences for many Indiana manufacturing firms.

IMA opposes the use of the throwback rule and/or combined reporting to tax earnings not connected to Indiana.

Encourage Investments in Production Equipment (Investment Tax Credits)

Issue/Status: Currently, a number of states allow corporate taxpayers a credit for a portion of investments in production equipment. Most of these state provisions provide far better investment incentive than does Indiana's Hoosier Business Investment (HBI) tax credit. The HBI Tax Credit provides incentives to businesses to:

1. Create new jobs or increase wage levels in Indiana; or

2. Substantially enhance the logistics industry by creating new jobs, preserving existing jobs that otherwise would be lost, increasing wages in Indiana, or improving the overall Indiana economy, in the case of a logistics investment being claimed by the applicant.

The non-refundable corporate income tax credit is calculated as a percentage of the eligible capital or logistics investment to support the project. The total amount of a tax credit claimed for a taxable year is a percentage determined by the Indiana Economic Development Corporation (IEDC) not to exceed:

1. 10 percent of the amount of a qualified investment made by the business in Indiana during that taxable year for non-logistics investments;
2. 15 percent credit of the amount of qualified investment made by the business in Indiana during that taxable year for digital manufacturing equipment investment (thru 2029); and
3. 25 percent of the amount of a qualified investment made by the business in Indiana during that taxable year, if the qualified investment is a logistics investment.

Problem: Indiana's economy is the most manufacturing dependent in the nation. The vitality of that economy is dependent on Indiana's industrial sector making the necessary investments in production equipment that enhances productivity and thereby allow Indiana's industrial sector to compete in both domestic as well as foreign markets. Indiana is competing against other states, some of which provide investment tax credits, for business investment dollars. Yet, Indiana's current corporate tax structure hinders industry's ability to invest in job-creating and job-retention activities.

IMA Position/Solution: IMA supports making the HBI Tax Credit refundable similar to the Economic Development for a Growing Economy (EDGE) Tax Credit. EDGE Tax Credit is a refundable corporate income tax credit that provides incentive to businesses to support jobs creation, capital investment, and to improve the standard of living for Indiana residents. States such as New York and Iowa offer refundable investment tax credits for qualified investments under certain circumstances, such as for new businesses. Indiana should offer the same.

IMA supports amending the HBI Tax Credit criterion to allow IEDC to consider the preservation of existing jobs that otherwise would be lost for non-logistics investments. Preservation of existing jobs is a criterion to be considered for qualified logistics investments under the HBI Tax Credit; as a result, this criterion should be included for non-logistics investments, as well.

Support Cyclical Reassessments and Annual Adjustments

Issue/Status: In 2006, a procedure called "trending" or "annual adjustment" was utilized in Indiana for the first time to ensure assessed values of real property reflected the property's market value-in-use. Trending involves researching sales of properties in an area over the previous year and using that information to update the values of comparable properties. In 2012, Indiana marked the conclusion of the latest statewide reassessment of property, the first since 2002. The reassessment was performed over a 20-month period from July 2010 to March 1, 2012. Local assessors of every county were required to conduct a physical inspection of each property to verify the county's property record information and gather cost, sales, and income data to determine assessed values. Trending decreases drastic changes to property values between reassessments by updating values on an annual basis. Therefore, while values have surged in past reassessments, the overall net assessed value statewide actually decreased 1.1 percent after the 2012 reassessment compared to 2011.

Starting in 2014, Indiana moved to a "Cyclical Reassessment" process whereby properties will be physically inspected over a four-year timeframe (25 percent of parcels inspected each year) instead of the current 20-month timeframe. It is expected that by spreading the assessment work over a longer period of time, there will be greater accuracy of the underlying parcel characteristics. Trending will continue during the cyclical reassessment process.

Problem: Historically, the differing assessment cycles for real estate and personal property resulted in gradual shifts of tax burden from real estate to personal property. The swing resulted from the upward pressure of inflation affecting personal property assessments each year, while real estate remained static until the next reassessment.

IMA Position/Solution: IMA supports maintaining the current annual adjustment, or "trending," process each year to ensure real property reflects market value-in-use. Additionally, IMA supports the enactment of the cyclical reassessment process to ensure annual physical inspections of at least 25 percent of the real property in a county, which should result in more accurate valuation through frequent data collection and the proper recordation of property characteristics.

Tax Increment Financing (TIF)

Issue/Status: Tax Increment Financing (TIF) is a method of funding local redevelopment projects by capturing the incremental increase in property tax revenues, which occurs when redevelopment increases property values. In areas designated as TIF districts, local taxing units continue to receive property taxes levied on assessed value before redevelopment; additional revenues generated by rising property values are allocated to redevelopment costs until those costs are repaid. TIF has been in effect in Indiana since 1975.

Problem: While the arguments for and against TIF mirror the arguments for and against tax abatement, the nature of TIF creates additional issues. For example, bonding is ordinarily a component of TIF creating type of bonds, repayment term as well as additions to debt concerns. Moreover, TIF differs from tax abatement in that specific taxpayers are financing infrastructure improvements for their own benefit whereas the benefit/detriment of tax abatement is on a community wide basis. The result of these concerns is to surround TIF with continual efforts to diminish the use of TIF and even to eliminate TIF entirely.

IMA Position/Solution: While it is appropriate for the legislature to continue to review the use of TIF and to make improvements where needed, Indiana must maintain TIF as a permanent part of the state's redevelopment options. More than 30 other states utilize this economic development tool. For Indiana to diminish or eliminate TIF would put the state at a competitive disadvantage.

Tax Abatement

Issue/Status: Tax abatement is intended to encourage new capital investment by providing deductions from increases in the value of property for property tax purposes. Legislation enacted in 2013 and 2014 grant counties greater flexibility to develop county-specific abatement schedules, including a personal property tax abatement up to 20 years for "new personal property."

Problem: The use of tax abatements to encourage investment is controversial. Advocates argue that the program generates jobs, stimulates the local economy, and increases the tax base of the community. Critics contend that it has little effect upon business location/expansion decisions and narrows the tax base thereby increasing tax rates on other taxpayers. They consider tax abatement to be "corporate welfare;" and in their view, it subsidizes investments that would have been made without tax abatement.

IMA Position/Solution: Tax abatement is a vital economic development tool. More than 30 other states utilize tax abatement. For Indiana to diminish or repeal tax abatement would put the state at a competitive disadvantage.

Support Tax Incentives for Workforce Training and Workforce Relocation

Issue/Status: Current state support of workforce development amount to significant total payouts but is scattered around multiple agencies and is most commonly distributed to educational institutions with little accountability to employers. The Indiana Economic Development Corporation (IEDC) does an excellent job of attracting new investment to Indiana, but has limited tools in supporting continued investment in the state or in attracting workers to move to Indiana.

Problem: An employer driven workforce system requires employers to have the ultimate decision making power over the direction of the states workforce development funding. This does not currently exist. Also Indiana's population of working age individuals is expected to be stagnant over the coming decades. This limits potential investment.

IMA Position/Solution: The IMA supports the expansion of direct to employer workforce programing in the form reimbursable credits or grants workforce training. The IMA also supports the creation of state and local tools to attract workers to Indiana.

**For more information on Workforce policies, see page 28.*

Tax Credit for Investment in Recycled Waste Technology

Issue/Status: Present law provides a limited number of credits against a corporation's state income tax liability that are primarily to encourage investment in certain specific areas. Research and development activities and the treatment of drug and alcohol abuse by employees are two examples of these credits. There is no such income tax incentive for corporations to recycle waste, use recycled waste products or purchase sophisticated recycling technology.

Problem: China, which until recently, was the primary purchaser of recyclable material from the US has effectively closed its doors to the US recyclers citing "contamination" resulting in the collapse of the recycling market. China has done this by setting new contamination standards that are nearly impossible for US recyclers to meet without the use of sophisticated technology.

IMA Position/Solution: Indiana should: 1) encourage the use of recycled waste to produce a finished product by providing a refundable tax credit against the corporate income tax for manufacturers and who invest in new technology to use recyclable waste that will allow the reuse of waste or by-products; and 2) provide a tax credit to recycling companies to encourage investment in sophisticated technology that will allow US companies to meet the new standards imposed by China.

Annexation

Issue/Status: Indiana has some of the most municipal friendly annexation laws in the country. We are one of only four states that allow involuntary annexation. The few legal remedies allowed to property owners to challenge annexations are avoided by with the use of annexation waivers required as a condition of connection to municipal utilities.

Currently, property owners can initiate a petition process and, if a sufficient percentage of the parcel owners within the area sign, the annexation is challenged in a court proceeding. Even if property owners get to this point in the process the burden for the municipalities is easily met. IN 2015, the Indiana General Assembly changed the law regarding waivers. Waivers executed today, expire if the municipality does not annex the property within 15 years. Waivers signed prior to July 1, 2015 may continue in perpetuity.

Businesses are prime targets for annexation, not because of any service delivery efficiency but as a tax revenue source. Manufacturers typically have lower demands on property tax funded local services, but pay high property taxes, particularly being the primary payer of business personal property taxes. Businesses that are not in an incorporated area and not subject to the municipal levy are likely not to be at the 3% property tax cap and thus a target for annexation.

Problem: When a manufacturer is annexed and the municipal tax rate and levy is added to their tax bill, the property tax liability can double – the municipal levy is second only to the school levy. It is common practice for municipalities to draw the boundaries of a proposed annexation area to include enough properties with waivers attached to make a remonstrance against the annexation impossible. Because the waivers run with the property, there is the common situation where an owner who purchased years after the signing of the waiver can be annexed without recourse. There is also no requirement that the owner must have notice of the waiver when the property is purchased. Considering the tax implications of an annexation on a manufacturing facility, the current state of Indiana's annexation laws does not provide stability or predictability over the property tax burden on a manufacturer specifically or taxpayers generally.

IMA Position/Solution: IMA supports stability and predictability for manufacturers' tax burdens and a tax that is closely related to the cost of service delivery to the taxpayer. Therefore the IMA:

- Supports the expiring of annexation waivers signed before July 1, 2015 if the municipality has not annexed the property within 15 years of the waiver being signed.
- Supports the requirement that annexation waivers will be void if the waiver is not recorded within 30 days of it being signed.

State Surplus Revenues/State Spending Levels

Issue/Status: In 2010, Indiana enacted legislation to provide that whenever a state budget surplus exceeds a certain level -- now 12.5 percent of general revenue appropriations in a state fiscal year -- half of that excess will automatically be refunded to taxpayers in the form of an automatic taxpayer refund (ATR). The other half of the excess will be used to pay down any outstanding state pension debt. However, in the 2013 state biennial budget, 100 percent of the excess reserves will be directed toward the pension stabilization fund. For 2014 and thereafter, 50 percent of any excess reserves are to be directed to the pension stabilization fund and 50 percent is to be used for the purposes of providing the ATR. In 2021, the state received billions of federal stimulus.

Problem: Indiana has, over the decades, struggled with the question of what to do with large budget surpluses. Defining the level of adequate state budget reserves has been part of the issue. Additionally, conflicts between additional spending and reducing taxes develop. At times, the state has dedicated surplus amounts to specific debt reductions; and at times, the state has developed one-time mechanisms to return some monies to taxpayers. The 2010 provision is the first time Indiana has established an ongoing surplus reduction/taxpayer refund provision.

IMA Position/Solution: IMA supports the automatic taxpayer refund (ATR) provision first enacted in 2010, and the decision to direct 100 percent of the excess reserves toward the pension stabilization fund in 2013. IMA believes that maintaining an excessive level of surplus goes beyond the role of wise fiscal stewardship and that a portion of surplus revenues should be returned to the private sector, so that those monies can be reinvested in further wealth-creating activities. In returning surplus revenues to the private sector, IMA recommends the following:

- While a budget surplus may be a cumulative amount based upon several consecutive years of economic growth, recessions are a natural and reoccurring component of the economic cycle. As a result, maintaining a sufficient reserve to protect against the need for tax increases or draconian budget cuts during economic downturns should be of primary importance.

- The state should not commit itself to ongoing spending programs that result in further building the state's expenditure base. Government spending programs immediately become perceived as entitlements. Once initiated, they are almost impossible to curtail.

- Any surplus reduction program should be based upon fostering economic growth. Short-term political considerations should be avoided. Surplus revenues should be focused upon areas in the private sector where the best current research indicates the greatest value in terms of economic growth.

- Recognition that the state continues to have unfunded pension obligations must govern the options chosen. Unfunded pension liabilities are, in effect, tax burdens placed upon future generations. Some allocation of the state's surplus balances should be set aside in a dedicated fund to reduce the unfunded liabilities of the pension stabilization fund and local public safety pensions.

Under current government accounting practices, taxpayers are unable to readily ascertain the financial position of the state. To foster better taxpayer understanding, as well as to add a greater consistency to the presentation of state financial data, standard accounting practices similar to those that exist in the private sector should be developed and strictly adhered to by all governmental bodies.

IMA further recommends that effective prohibitions against excessive increases in state spending be implemented. A constitutional amendment limiting state spending increases to some measure that incorporates both economic and population growth would be advisable. Any spending limitation, however, should not be so inflexible that it cannot be overridden by an affirmative vote of a substantial majority of the legislature.

HUMAN RESOURCES, LABOR, LEGAL

Worker's Compensation

Issue: Indiana has long had one of the most cost-effective state laws on workplace injuries in the nation.

IMA Position/Solution: Maintaining that and controlling future costs are of the utmost importance to manufacturers.

1. Maintain the original purposes of enactment from the 1910s through 1929 and beyond.
   A. No fault system with very few defenses and no trial court involvement.
   B. Exclusive remedy bars civil actions against anyone in the employment chain.
   C. Employer has complete control of the choice of medical treatment with exception for emergency room treatment.
   D. Weekly benefits not to exceed 66 2/3% of pretax wages with statutory cap on calculation.
   E. Compensation for permanent partial losses to the body to be for impairment rather than for disability.
   F. Maximum total benefits and weeks of compensation written into statute with resort to the 2nd injury fund after maximums are met and to the 2nd injury fund for permanency beyond those maximums in limited increments requiring requalification.
   G. Enforce strict causation burden of proof exclusively related to the workplace.
   H. Medical fees charged to employers/insurers of injured claimants should be limited as are other kinds of medical care to prevent cost shifting onto the worker's compensation payers. To that effect, the existing state laws that cap hospital procedures and procedures conducted at ambulatory surgical centers (ASC's) at 200% of Medicare reimbursement ought to remain in effect and not be modified by the state legislature.
   I. Self-insurance should be carefully overseen to ensure that fiscal responsibility for claims is not reduced.
   J. The efficient operation of the Worker's Compensation Board should be carefully maintained.
   K. Hearing members should be completely neutral and adhere strictly to the plain meaning of the words of the Act.
2. Apply the same criteria to the Occupational Disease Act.

Labor

Issue: The employment climate is greatly affected by state law impacting the employer/employee relationship.

IMA Position/Solution: Keeping it favorable to good employment relations is a priority.

1. Indiana should prohibit by law forced union support. This includes enacting Right to Work legislation covering all employers.
2. No state labor law analogous to the NLRA should be enacted.
3. State Civil Rights law should be in place and limited in jurisdiction to the smallest employers
4. IOSHA should be in place under Section 18(e) of the federal act and should never adopt any standard other than by reference to federal law. IOSHA should always be limited by law to

be no more stringent than federal enforcement. The Indiana Department of Labor should not have rule making authority other than to adopt federal OSHA standards by reference.

5. State laws affecting the employer/employee relationship should be for extremely limited purposes and of minimal impact, never interrupting the enterprise of the employer.
6. No state legislation should ever be enacted where the terms of the legislation are subject to bargaining under the NLRA or and other law.
7. No state law should exist requiring wage and benefit setting by government for tax funded projects. Neither should any project involving public funds require union only work nor impose the wage and benefit standards of unions.
8. Indiana should always remain an employment-at-will state.

Mandatory Workforce Vaccinations

Issue/Status: The COVID-19 pandemic caused many employment issues for Indiana manufacturers. Employers have had to balance workplace safety with individual medical concerns and workplace disruptions. In the fall of 2021, the Occupational Safety and Health Administration (OSHA) has proposed a rule that will require employers of more than 100 employees to mandate vaccinations for their entire workforce. Federal contractors and their subcontractors will also be required to mandate vaccinations for their employees. Some states, like Texas and Florida, have specifically prohibited employers for requiring any vaccine as a condition of employment.

Problem: This problem is two-fold. Firstly, broad vaccine mandates such as the proposed rule have created confusion among employers about compliance with the rule. There is no clear mechanism of enforcement and there is great potential for arbitrary and unfair enforcement by government. Secondly, large employers cannot afford large-scale labor interruption and production outages in the event that there are employees who refuse to comply with the mandate. When there is a widespread labor shortage, there is no room for additional losses. In all respects, manufacturers treat workplace safety as being of the utmost importance and ought to be given the latitude to make decisions about their workforce internally. There are too many variations in types of businesses and types of job classification for mandates - either to require vaccines or to prohibit them – to be implemented without negative consequences.

IMA Position/Solution: The IMA believes that manufacturers and other employers should make vaccination decisions for the health and safety of their workforce, and not be unduly mandated or prohibited from requiring them by government.

Tort/Civil Law/Courts

Issue: Maintaining a favorable civil law climate is critical to the existing business climate of a state. Indiana's is good now and must remain so.

IMA Position/Solution:

1. Tort remedies should be severely limited to prevent abuse by would be plaintiffs.
2. Responsibility for loss/injury should be apportioned among the parties including plaintiffs and non-parties to reflect actual responsibility
3. Serious remedies should be applied by law and strictly enforced against those who engage in bringing false or frivolous actions.
4. Existing remedies should not be changed to enhance plaintiff recovery.
5. Whenever possible, rather than a law stating defenses for defendants, the law should create immunity. The purpose is not to allow a defendant to successfully defend in court, but to avoid being in court.

6. The method of selection of Appellate and Supreme Court Justices should be reformed/revised to remove plaintiff's bar bias in the selection process.
7. The legislature should enact policies that ensure that plaintiffs comport with fair and ethical trial practices, including reasonable limitations on non-economic damages awards.
8. 3rd party "lawsuit lending" practices should be regulated strictly and limited where necessary.
9. Federal, state, and local units of government should engage in public nuisance doctrine litigation only when the public's right to access has been infringed upon in the traditional sense – product defect cases should be initiated by consumer defendants, and not units of government under an alternate theory of liability.

Unemployment Compensation

Overall Objectives

***Issue*:** This system must be fair and reasonable to finance. It should be only for those with substantial attachment to the workforce who are unemployed through no fault of their own.

IMA Position/Solution:

1. The law must require substantial employee attachment to the workforce via work for employers covered by the act.
2. Must require separation from employment not for just cause in connection with the work and must not allow compensation for those who quit their jobs voluntarily or for personal reasons.
3. Serious wrongdoing resulting in discharge should result in cancellation of wage credits.
4. Law should penalize those disqualified by reduction of benefits rights during the benefit year.
5. Maintain benefits at a level such that they are not a disincentive to work. Require strict adherence to weekly eligibility requirements of being able, available and actively seeking employment.
6. Assess benefit liability to all base period employers proportionally to their wages paid.
7. The system should charge all benefits, with few minor exceptions, to base period employers.
8. No one should be eligible during vacation periods unless they have been notified that they will not be employed following the vacation period.
9. The array of experienced rated taxes should not create either reward for those employers who benefits from UI benefits flowing into the economy nor a disincentive to hiring. Administration of the law should be neutral and appeals should be to referees who are neutral and fair. Fair hearings should allow parties to be seen by the trier of fact. Referees and administrative law judges should be monitored regularly.

Inclusion of "Gig" Workers in Unemployment Insurance System

Issue/Status: Non-standard or gig work consists of income-earning activities outside of standard, long-term employer-employee relationships. Some economists and pro-labor advocates have proposed permanently including gig economy workers and self-employed individuals (essentially those workers not connected to an employer) in Indiana's unemployment insurance system. These workers do not currently pay into the unemployment insurance system.

Problem: Gig economy workers and self-employed individuals were granted unemployment insurance benefits during the height of the COVID-19 pandemic by the federal government. These benefits were paid by the federal government with almost no mechanism in place to prevent fraud.

The workload undertaken by the Department of Workforce Development (DWD) required twice as much processing time as the workload for traditional unemployment insurance claims – simply to detect and investigate fraud. This pervasive fraud and related investigations resulted in inefficiencies that are not sustainable for DWD. The DWD should be commended for the work done during the pandemic and should, as quickly as possible, be refocused on connecting workers with the tens of thousands of jobs available rather administering programs that, in the best of circumstances, are inefficient and riddled with fraud.

IMA Position/Solution: No changes should be made to the laws governing Indiana's unemployment insurance system to expand benefits to workers not connected to an employer without a clear mechanism to collect state unemployment taxes on those workers and to track them so as to limit fraud.

Immigration

Issue: This should not be a state issue.

IMA Position/Solution: Oppose establishment of a state law. Immigration is within the jurisdiction of federal law.

Private Property Rights

Issue**:** This should not be overcome by other rights.

IMA Position/Solution: Oppose imposing restrictions on an employer's control of their private property as they deem appropriate. This includes opposing restrictions on property owners' right to exclude materials, item and conduct they wish not to allow on their property.

General

Issue**:** Oversight of imposition of regulatory burdens on manufacturers.

IMA Position/Solution: Statutory enactments leading to regulations should prohibit overzealous enforcement by regulations or rules thus preventing undue burden upon the manufacturing community that is regulated.

WORKFORCE DEVELOPMENT

The Indiana Manufacturers Association has developed this statement of policy on Indiana workforce development issues. The intent of the policy is to provide a series of goals and objectives for the modification of state and local laws and policies around workforce issues.

It is the overall position of IMA that any change to the education, workforce development, and economic development systems should be taken with employer and market needs in mind. Existing education/workforce development/economic development programs must be redirected to deliver tangible employment and income outcomes, as employers already pay a heavy burden for these policies.

The following policies are based on the IMA's fundamental belief that:

- The workforce development and education systems should be designed to promote economic growth, as well as retain talent, within the state.
- Workforce development policies should be driven primarily by market demand and employer needs.
- The manufacturing industry's workforce needs are immediate, and there is not sufficient time for long-term policies to bear fruit.
- Longer term, structural educational system issues need to be addressed.
- The workforce development system should be easy to navigate, both for employers and employees, while keeping in mind that the primary client of the system is employers.
- The workforce development system should enhance the state's competitive position relative to the global environment.

OVERALL OBJECTIVES

The primary objective of IMA is to institute a workforce development system that:

1) Promotes high-wage and high-demand jobs in manufacturing and related industries.
2) Positions Indiana to have a more competitive workforce for economic growth and manufacturing expansion.
3) Fosters incentives for manufacturers to create and retain high-paying jobs.
4) Reframes the narrative around manufacturing so that it is once again seen as an attractive career opportunity, helping many workers climb the economic ladder of sufficiency.
5) Continuously work to realign the education/workforce system (K-16 and beyond) so that it fits the need of the manufacturing industry, in particular, as well as the realities of the ever changing 21st century economy.
6) Creates incentives for individuals in the workforce to relocate and work in Indiana.
7) Encourages the state to build its economic development and workforce activities around retention and not just attraction. The state needs to retain the existing jobs and businesses in the state – focusing all incentives on increases in capital investment and headcount is not in alignment with the reality of the 21st century manufacturing landscape, particularly at full employment and a dwindling labor force.

High School Graduation and Postsecondary Preparation

Status: In 2019, House Enrolled Act 1002 established a 15-member School Accountability Panel that is responsible for studying the topic of aligning school accountability with Indiana's graduation pathway requirements and recommending new indicators of school performance to replace the ones that are in current use today.

Problem: With the passage of Graduation Pathways in 2018, Indiana students are now able to individualize their graduation requirements to align to their postsecondary goal. No longer must all students fit into the same academic mold, but rather, they can choose the options that best meet their postsecondary needs and aspirations. Realignment of school accountability is necessary due to graduation pathway requirements completion will be state mandate for all students in the graduating class of 2023.

IMA Position/Solution: Due to the changing dynamic of academics and the labor market, what a high school graduate looks like will be very different. It is important that accountability in Indiana K-12 education reflects an accountability system that raises educational performance and improves employment and educational outcomes in the next generation of the workforce.

Provide Funding for Dedicated Career Coaching and Relevant Professional Development for Educators in Indiana High Schools

Status: Employees of the manufacturing industry make more, on average, than employees in any other industry. In regards to annual compensation, manufacturing employees make, on average, more than $74,000 in total annual compensation. Growth opportunities in manufacturing employment abound, especially considering that it is projected that Indiana manufacturers may not be able to fill 60% of their open positions in the next decade. This is particularly true in skilled production occupations, which are high-wage positions with valuable transferrable and marketable skills.

Problem: A 2014 Manufacturing Institute/Deloitte survey showed that only 37% of respondents would encourage their children to pursue a career in manufacturing. College and career and technical education enrollments in programs related to manufacturing, trades, and industry are not sufficient. Anecdotally, students, educators, and parents are not amenable to careers in manufacturing. This is also true of adults returning to the workforce, who have fears about layoffs and instability in the industry.

This perception problem is exacerbated by the fact that high school students are not receiving adequate career counseling. A recent study of school counselors found that too little time is spent on career readiness, and counselor education programs are not providing sufficient preparation in career counseling. In many cases, "tending duties," or non-counseling-related tasks that are often assigned to counselors by school administrators, are keeping counselors too busy to provide these services to students. Of counselors surveyed, 60% spent less than 25% of their time in a given year in providing career readiness services to students. In 2018, the state began a demonstration program, known as Indiana Career Explorer, which is an online career counseling tool and curriculum in 8th grade. While an online intervention is conceptually helpful, it is not likely this particular tool will be a sufficient intervention to help connect more youth with the opportunities in manufacturing, and may, in fact, be directing students to other opportunities.

IMA Position/Solution: The Indiana manufacturing industry must change the hearts and minds of students, student advisors, and adults returning to the workforce. The industry must clearly demonstrate that a job in manufacturing is a viable option, with growth potential. Industry must take a leadership role in working within our communities to change these perceptions. Many of these activities, such as Manufacturing Day events, school partnerships, and other types of outreach are already occurring.

Coaches in each Indiana high school. This must be coupled with funding to provide sufficient training, certification, and ongoing professional development for these career coaches, so that they are able to provide their students with relevant information and career guidance.

Additionally, funding for educator externships in manufacturing, to take place over breaks in the school year, would greatly increase awareness around the opportunities within the manufacturing industry for their students.

Expand Direct-to-Employer Workforce Programming and Institute Total Transfer Credit Reciprocity

Status: The manufacturing industry is Indiana's largest employer, providing high-wage employment opportunities to nearly one out of every five workers in the state. Over the next decade, the Indiana manufacturing industry will need to hire upwards of 15,000 individuals per year, due to planned expansion and Baby Boomer retirements.

Problem: Indiana spends in excess of $1 billion in funding in a given year for workforce development. However, it is difficult for manufacturers to benefit from these funding streams, as employers are currently not considered to be the primary client of the workforce development system. The workforce development system is primarily encompassed by the Indiana Department of Workforce Development, the Indiana Department of Education, the Family and Social Services Administration, the Indiana Economic Development Corporation, and the Commission for Higher Education.

In the current environment, there exist minimal opportunities for employers to utilize the workforce development system for incumbent worker training, as the EDGE for Retention and the Skills Enhancement Fund are not available to many employers, particularly small- and medium-sized businesses. Additionally, the EARN Indiana work-study program and the Adult Student Grant is not accessible to many employees who wish to continue their education due to minimum credit hour per year requirements. These requirements are difficult for full-time working adults with children and other family responsibilities.

In 2017, Governor Holcomb created the Next Level Jobs Employer Training Grant and Workforce Ready Grant programs. The Workforce Ready Grant is a non-needs based student scholarship program that provides free training at approved education providers, so long as the training aligns with occupations certain designated "high-paying, in-demand industries". The Employer Training grant provides employers with reimbursements of up to $50,000 to train their employees in similar fields. The employer grant was originally limited to new hires but has recently been opened up to incumbent worker training, so long as the training is accompanied by a wage increase. The Next Level Jobs Employer Training Grant and Workforce Ready Grant programs are a step in the right direction, but both need to be expanded both through more funding and through more flexibility.

Additionally, decisions on workforce programming and funding are made in a top-down bureaucratic fashion, with insufficient employer input. With the elimination of the Governor's Workforce Cabinet in 2025, the state now has a need for a body to review workforce and training programs for effectiveness. The IMA would like to see a board created that consists primarily of employers and employer organizations, with minority representation of government and quasi-government entities.

IMA Position/Solution: The state should build upon the existing a direct employer grant and incentive programs, where employers receive reimbursement for training expenses associated with partnering with Indiana public higher education institutions, high schools, career centers, or other state training providers. This is a business-driven solution to the state's workforce issue that would require participating employers and their education partners to identify the missing skills needed to start and complete a valued credential or degree.

Creditable Refundable or allowable expenses for employer and incumbent worker programs should include:

1) Direct payments for training (for youth, adults, and incumbent employees);

2) In-kind payments for:

   a. Instruction assistance;

   b. Equipment and/or facilities;

   c. Program development and delivery costs; and/or

   d. Transportation assistance for workers and students.

Such a program would provide maximum flexibility, creativity, and local control, while guaranteeing that employers will be the final decision maker as to how training funding dollars are directed.

Improve Access to Work-Based Learning Opportunities for High School Students

Status: With the enactment of House Enrolled Act 1002 during the 2023 Legislative Session, the Indiana General Assembly created a new framework known as the Career Scholarship Account (CSA) program for high school students. CSA students may receive up to $5,000/year to engage in applied learning programs. These programs include registered apprenticeships, work-based learning opportunities, and other career-oriented training. The passage of HEA 1002 and creation of the CSA program represents a policy shift for the State of Indiana, whereby state officials have committed to ensuring that high school students are exposed to career opportunities at a younger age and not are not predetermined to attend a post-secondary institution after graduation. Though the CSA program was effectively defunded in the 2025/26 state budget, officials within the Department of Education have recently developed new high school diplomas for the 2029 high school cohort, which will almost certainly lead to more high school students engaging in work-based learning opportunities.

Problem: Though manufacturing companies may apply to be approved entities that offer applied learning programs within the CSA framework, the costs of having minors in the workplace outweigh the benefits. Most specifically, carrying workers compensation insurance and general liability insurance for minors is overly expensive, and this serves as a barrier to engaging minors in applied learning programs at manufacturing companies.

IMA Position/Solution: State policymakers should enact policies that directly subsidize the cost of carrying insurance policies for minors. There are options that are available: (1) Offer a financial incentive to manufacturing companies who employ high school students, provided that the employment takes place within the framework of the CSA program, to offset the cost of related insurance; (2) Direct school corporations to partner with manufacturing companies and assume a portion of the risk associated with the employment of high school students, therefore driving down insurance costs; (3) Sanction a "state-administered" insurance product for manufacturing companies and others that are engaged in the CSA program; or (4) a combination of the above options. This list of options is not exhaustive – it simply illustrates the fact that the State does have great latitude here and should take action so that manufacturers can participate in the CSA program in a more meaningful way.

Hold Harmless Programs that Work

Status: There are a number of innovative programs available through the workforce development system that show great promise, serve vulnerable populations, and need to be protected and possibly expanded over the next several years.

Problem: Over $1 billion is spent every year in Indiana on workforce development initiative. While the IMA does not believe that new funds need to be spent in addition to these large amounts, it is important that several initiatives that show promise and are already in place are held harmless as new IMA initiatives take effect.

IMA Position/Solution: Existing or emerging programs such as the Excel Centers of Goodwill Industries, which helps returning adult learners gain a high school diploma and employment skills; the Jobs for Americas Graduates (JAG) program, which keeps at-risk youth in school; and the Purdue Polytechnic charter school model are good examples of programs that should continue to be funded and perhaps expanded. Expansion of these programs may take place as funding from programs that are deemed ineffective is redirected to those programs that work. Care should be taken in eliminating or cutting funding for existing and emerging workforce initiatives that serve the most vulnerable populations, such as veterans, at-risk youth, persons with disabilities, and low-income families, among others.

Focus on Incentives and Policies that Address Retention of Existing Workforce and Provide for Opportunities to Grow Indiana's Labor Force

Status: In many areas of the state, employers don't only have a skills gap problem, but they also face dwindling population and a shrinking labor pool.

Problem: Data shows that the Indiana labor force is just not growing fast enough – the workers leaving the workforce are those who are highly skilled. Those remaining individuals not currently in the labor force (those who are able to work but are not currently making themselves available to work), may, in fact, not be employable. The problem isn't growing jobs, but filling them. Our incentive programs have been driven to create more jobs, which business has done. The state now needs to help us build up manufacturing heavy regions of the state where we have all of these open jobs.

Create Relocation Tax Incentives for Out-of-State Workers to Live and Work in Indiana

The state of Indiana should incent skilled workers in growth industries (including manufacturing) to move to and work in Indiana, through a refundable individual income tax exemption/credit for relocation or as part of an economic development package. Elements of an incentive should include:

- Eligibility limited to those new residents who are working in a high demand, high wage occupations. High demand, high wage occupations defined by state. Definition may be different based on region.
- Taxpayer could not have been Indiana resident for 5 previous tax years.
- Cap for individuals and household taxpayers.

- Likely an individual and household cap per tax year and a limit to number of eligible years.
- Indiana Department of Revenue or other appropriate agency would be able to cross reference business employment information to ensure compliance with workforce requirements.

Additionally, the Indiana Department of Economic Development Corporation should consider codifying existing tax incentives and resources to not only attract jobs in business attraction incentives but skilled labor within new companies locating to Indiana as well.

Indiana manufacturers are managing a decline in workforce: high need in key skills and lack of people. If policy for existing tax incentives for business attraction was constructed to bring skilled human capital in addition to jobs, this would bring a new taxpayer base to the State and curb the possibility of new companies competing with talent of other companies in an area.

Pair Workforce Recruitment Strategy with Local Efforts

Option to designate area of relocation incentive eligibility with local incentives around affordable workforce housing.

Address Systemic Barriers to Employment

Status: Indiana continues to see a higher-than-average labor force participation rate of roughly 65% (the US average hovers around the 62%-63% range in a given quarter). This still means that many Hoosiers are sitting on the sidelines. In many cases, this is due to the fact that they face systemic barriers to employment that need to be addressed.

Problem: Barriers to employment may encompass many things. Primary barriers may include lack of affordable/workforce housing, lack of transportation, insufficient child care options, lack of a high-school equivalency, a criminal record, a disability, and struggles with drug use/abuse. The state has made some inroads in this area with allowing employers to utilize the WorkIndiana program for adult basic education (high school equivalency) programs and some employer-focused drug use and treatment programs were passed into law in 2018. The Indiana Department of Corrections is working to train non-violent offenders and connect them with employment opportunities upon release.

More work needs to be done to address employment barriers and challenges. On the childcare issue alone, a recent Indiana University study shows that child care related absences and turnover costs Indiana employers approximately $1.8 billion each year. Lack of affordable housing (defined as housing costs – including utilities – that does not exceed 30% of monthly income) in many areas is a serious and sustained barrier to employment for many currently on the sidelines. In other areas of the state, many people will not risk taking an entry-level job where they will hit the "tipping point" for losing eligibility for state and federal entitlement programs, whereby they will actually net less income for their families.

IMA Position/Solution: The IMA needs to be strategically engaged in the policy discussions for programs that, while not directly related to workforce training, either impede or encourage individuals to participate in the labor force. It is important to emphasize that these issues are not our "core" workforce issues and should not become a primary focus of IMA workforce policy, but they are important and should, at minimum, be monitored for consistency and alignment with our other workforce initiatives.

Workforce Governance

Status: The Governor's Workforce Cabinet (GWC), which was created by Senate Enrolled Act 50 during the 2019 Legislative Session, replaced the State Workforce Innovation Council to conduct a systematic and comprehensive review, analysis and evaluation of whether Indiana's primary, secondary and postsecondary education systems are aligned with employer needs. Additionally, the Cabinet evaluates Indiana's students and the workforce are prepared for success in the 21st Century economy. House Enrolled Act 1001 – passed during the 2025 Legislative Session – eliminated the GWC, effective immediately.

Problem: ~~Currently, 23 members of the GWC represent various interests including; K-12, higher education, industry, government agencies and the Indiana legislature. Of the 23 members, only 7 members represent industry. Of the 7 members, only 2 members represent the manufacturing industry.~~ The Governor's Workforce Cabinet played an important role in the evaluation of the various workforce development programs funded by the state. Furthermore, the GWC served as the state's authorized workforce development board for purposes of WIOA. The federal legislation requires each state that receives WIOA funds to designate a workforce development board for compliance – by eliminating the GWC, the legislature may have inadvertently jeopardized Indiana's ability to receive these crucial training and education funds.

IMA Position/Solution: In order to align K-12 to a skilled, adaptive and motivated workforce it is imperative that industry be the drivers. It is projected that 1 million jobs will go unfilled in Indiana's labor market in the next decade. This alarming statistic is no secret to the workforce which is why industry has taken the lead in communities across Indiana to find a solution. If a systematic change is to be addressed, The State should implement governance structures for workforce that are employer led, specifically majority employer representation, industry association involvement, and chaired by employer representatives. The IMA supports the establishment of a new workforce governance board that meets these criteria.

Postsecondary Preparation – Indiana Federation for Advanced Manufacturing Education (INFAME)

Status: In conjunction with Toyota and the National Manufacturers Association, IMA launched an expansion of efforts to assist manufacturers fill their workforce needs. The Indiana Federation for Advanced Manufacturing Education (INFAME) was created to expand the global-best FAME training model in Indiana. FAME USA is a nationally recognized manufacturing education program where businesses come together on a regional basis and work with higher education partners to provide an educational pathway for high school graduations. Students who complete the program graduate debt free with an in-demand associate degree and job training.

IMA Position/Solution: The IMA further encourages public policy to provide the infrastructure and incentive for more intentional collaboration and coordination between industry and education in order to connect talent to employment opportunities and robust apprenticeship-style training opportunities to fill the critical need for a talent pipeline. Additionally, the IMA supports prioritized workforce funding in state provided programs for capital costs, training and curriculum for INFAME administration amongst Indiana chapters.

Design Incentives for Employers to Provide Affordable Child Care Options for Employees

Status: Indiana has taken several actions recently to attempt to drive down the cost of child care for Hoosiers. During the 2023 Legislative Session, legislators included a tax credit for small businesses who expend capital on projects to establish or expand child care centers in the State Budget (House Enrolled Act 1001, 2023). Then, in the summer and fall of 2023, Governor Eric Holcomb announced a new, $25M Employer-Sponsored Child Care grant program. The Indiana General Assembly also tasked a panel of legislators with continuing to study child care issues. These actions, when taken together, demonstrate that the State of Indiana has a sustained focus on improving access to child care for Indiana's citizens.

Problem: The lack of affordable child care in Indiana presents a two-fold problem for the workforce. Firstly, it is a barrier to employment for parents, and especially so for middle and low income households. When child care is too expensive, difficult to access, or of low quality, families face incredibly difficult decisions about how and when to engage in the workforce. Recent studies show that employment of women in Indiana still lags nearly 20 percentage points behind the employment of men. Secondly, it hinders the ability of employees or post-secondary students to pursue additional education and/or training. In Indiana, an estimated 22% of all undergraduate students - 82,288 individuals - are raising children and nearly 40,000 are single mothers. Although generous sources of support are available in Indiana, a year of child care can require an additional $9,000-$10,000 over and above tuition costs.

IMA Position/Solution: Measure the demand for the tax credit and grant program mentioned above. If there is high demand and success, propose legislation to expand the scope of each. Additionally, the State should continue to direct resources to employers to address this issue, so long as the underlying goal is to expand child care capacity in Indiana without the consequence of having those subsidies simply drive up prices in a tight market.

ENVIRONMENTAL

General Issues

Environmental Stewardship

Issue/Status: The majority of manufacturers take their responsibility for environmental stewardship very seriously. This is manifest in a commitment to regulatory compliance, management systems and pollution prevention.

Problem: Indiana has very few programs to support and encourage top performers. This can be a detriment to attracting and retaining manufacturing companies in Indiana. IDEM is in the process of implementing the Environmental Performance Track Program, which is a good beginning. The program does, however, require annual submissions by program participants of environmental improvement projects for assessment by IDEM. Currently, the IDEM program does not solely recognize actions already taken.

IMA Position/Solution: The IMA supports the following concept: Indiana manufacturers that consistently demonstrate environmental stewardship through a combination of commitment to environmental compliance, operation of an environmental management system, or pollution prevention can be relied upon to carry out their environmental responsibilities without rigorous oversight. These manufacturers should enjoy greater regulatory flexibility. Possible benefits could include expedited permit reviews and fewer monitoring and reporting requirements. The IMA supports the adoption and expansion of the Environmental Performance Track Program to implement and develop the stewardship concept for the benefit of our state.

Non-Rule Policy and Informal Agency Guidance

Issue/Status: IDEM has developed a growing reliance on the use of non-rule policy documents (memos, letters, etc.) and informal guidance decisions. Guidance decisions do not provide for public input and are not supportable in law.

Problem: Informal guidance documents reduce a company's ability to understand all of its obligations and can increase costs of compliance and disrupt project implementation. Without public knowledge of guidance and non-rule policies, these policies may be crafted and finalized without the benefit of full discussion of all the issues surrounding them. This can lead to guidance documents that are unduly burdensome, inefficient or ineffective. Without a process for public input, policies that carry the effect of law could cause significant problems that would have otherwise been avoidable.

IMA Position/Solution: Regulated entities should not be required to follow a policy that does not carry the effect of law.

Environmental Policy Leadership

Issue/Status: The Environmental Rules Board (ERB) has been successful in providing opportunities for stakeholders' input into significant rulemaking issues. However, there remains opportunity for the administration to assume a greater leadership role in determining the appropriate, high-level environmental policy issues for which new rules and/or legislation would be developed.

Problem: The ERB process is not always used to develop policy or address controversial rulemaking issues, but is used by IDEM to communicate its positions. When used, the process is not always open and inclusive. There is no consistent process to develop high-level environmental policy. This results in policies being determined at levels within IDEM where consistency cannot be assured, which leads to frustration among all stakeholders as new legislation and rulemaking activities are pursued.

IMA Position/Solution: The IMA encourages the administration to continue a more proactive role in providing leadership to adopt environmental policy that provides strategic direction to legislative and rulemaking activities. The IMA supports the IDEM's use of regulatory development work groups that include all stakeholders used in a constructive manner at the inception of the process. The IMA further encourages the administration and the IDEM to provide management training to IDEM staff so that overall management quality at the agency can be improved and made more consistent with the laws that govern IDEM.

Compliance Assistance

Issue/Status: The general assembly has enacted several statutes (e.g., Environmental Audit Privilege and Compliance Assistance Program) designed to find new, creative ways to aid compliance. IDEM has established an Office of Compliance Assistance and a Compliance and Technical Assistance Program (CTAP) with a modest staff.

Problem: The regulated community continues to make substantial progress in understanding and implementing new and existing regulatory requirements and the IMA applauds IDEM's role in this process. However, much more could be done to develop a more productive partnership, spirit of cooperation and trust between the regulators and the regulated. For example, many still remain cautious, notwithstanding IDEM's April 1999 Self-Disclosure and Environmental Audit Policy, about voluntarily disclosing compliance issues discovered because of the uncertainty of IDEM's response and fears of enforcement. In addition, many at IDEM routinely demand that the regulated community comply with IDEM or EPA guidance, which do not have the effect of law.

IMA Position/Solution: The IMA supports and urges the expansion of beneficial programs like the Compliance and Technical Assistance Program, pre-inspection notification by the Office of Enforcement, voluntary audits and pollution prevention. IDEM should continue work to develop a true partnership with the regulated community and the public to increase compliance.

IDEM should continue to advertise and honor its self-disclosure and auditing policy and make clearer to the regulated community how it will respond to voluntary disclosures, both in terms of its substantive response and whether it will give the voluntarily disclosed information confidential treatment. Joint training of regulators and the regulated community on new programs and rules will allow all sides to better understand each other's views and problems and help break down the "us vs. them" barrier.

Finally, IDEM program offices should continue to periodically hold public outreach sessions to describe upcoming priorities and positions and to develop an honest, open dialog as to what IDEM expects.

Permit Application Process

Issue/Status: IDEM has made great strides in processing permits, increasing the speed to one of the best states in the country. The General Assembly enacted IC 13-15-4-10, granting discretionary authority to the IDEM commissioner to suspend the processing of an application and the period during which the application must be completed under certain circumstances, including when the "commissioner receives a written request from an applicant to withdraw or defer processing of the application for the purposes of resolving an issue related to a permit or to provide additional information concerning the application."

Problem: IDEM routinely requests permit applicants to provide more information, which requests may require more time than is provided under the application period. Instead of suspending the application upon the permit applicant's request, IDEM is routinely denying applications when the application period expires. IDEM's denial of requests to defer application processing results in increased fees to the applicant; but more importantly, increases the time frame for the agency to properly review the permit application.

IMA Position/Solution: The IMA supports the modification of IC 13-15-4-10 to require suspension of the permit application at the request of the applicant for purposes of resolving an issue related to a permit or to provide additional information concerning a complete application, provided the statutory conditions are met.

Permit and Fee Accountability

Issue/Status: The General Assembly has the authority to establish fees charged to grantees of water, hazardous and solid waste permits. Fees under the state's Title V permit program are levied by the Environmental Rules Board. In 1994, permit accountability time frames were adopted to establish standards for agency staff related to permit issuance.

Problem: Progress has been made in increasing accountability to the regulated community for how permit fees and dedicated funds are spent as a result of the activities of the Environmental Quality Service Council and the legislative reform of the three rulemaking boards. Concerns remain, including the accountability of how these funds are utilized within the agency. The permit backlog has decreased and the potential reduction in workload suggests fewer staff requirements, as opposed to increasing fees to maintain a budget designed to issue permits that were backlogged over time.

IMA Position/Solution: The IMA supports the continuation of legislative control over fee structures for the water and solid and hazardous waste programs. IMA supports the use of high-quality staff and the rebate of permit fee funds not utilized in a timely manner. Further, the IMA supports clearly-defined goals for IDEM administrative improvement related to permit issuance and compliance support paid for, in part, with permit fees. The IMA supports the current permit fee system developed under the Indiana Title V air program as long as accountability measures agreed upon are closely followed by IDEM. The IMA supports the usage of dedicated funds only for their dedicated purpose and opposes use for undocumented costs.

The IMA supports benchmarking Indiana's environmental permit fees against competitor states to ensure regulatory costs do not hinder economic growth. Fees where Indiana is competitive with other states should remain stable. The IMA acknowledges that certain fees, such as the FESOP annual maintenance fees may be necessary to ensure stable funding for compliance programs, a comprehensive review is necessary.

Maximum Penalty for Minor Violations

Issue/Status: The Indiana General Assembly enacted IC 13-30-7 to provide that the maximum penalty for a minor violation committed by a business entity to be a maximum of $500. The statute requires the Environmental Rules Board adopt regulations to administer the provisions of the statute.

Problem: IDEM requires the same civil penalty policy for any violation cited in a Notice of Violation. IDEM issued a new Civil Penalty Policy in 1999 that does not comply with the statute and sets a penalty range of $1,000 to $5,000 for violations with minor potential for environmental harm.

IMA Position/Solution: The law establishes a maximum $500 penalty for a minor violation. Administrative rules should be adopted by the Board that define a minor violation, including any violation of a numerical limit or standard that falls within the statistical range used to establish the standard. When IDEM pursues an enforcement action for a violation that is minor, as defined by the legislature, the assessed penalty should not exceed $500.

Sunset Provisions for Administrative Rules

Issue/Status: Legislation was enacted in 1996 requiring all administrative rules to sunset seven years following promulgation, unless the rule is readopted. IDEM proposed that all environmental rules be readopted in an Indiana Register notice published in 2000. IDEM specified that these rules would be readopted unless public comment regarding a specific part of a rule was received. IDEM would then make recommendations to the appropriate rulemaking board following a review of public comments.

Problem: The process put in place in 2000 has resulted in considerable administrative burden on IDEM, the regulated community and other interested parties. IMA supports rules being readopted based on the promulgation date rather than readoption of all rules every seven years. IMA believes this is consistent with the current statutes.

IMA Position/Solution: The IMA supports the principle behind the sunset requirements but recognizes that some modification to the existing statute to ease the administrative burden for all stakeholders may be necessary. An approach that would stagger rule expiration dates, rather than readoption of administrative rules in mass once every seven years, would be preferred. IMA believes rules should sunset, unless justified.

Environmental Rules Board

Issue/Status: The Environmental Rules Board relies heavily on IDEM to advance environmental rules and other initiatives that are appropriate and in the best interests of the State of Indiana. Board members do not have any independent expertise from IDEM to assess alternatives to IDEM proposals.

Problem: The board have virtually no staff of their own, thus all drafting and processing of comments is performed by IDEM. The current process does not allow for an independent review of the information provided by both IDEM and stakeholders.

IMA Position/Solution: Rule development is the responsibility of the Environmental Rules Board, and the statute requires that the board be independent. The IMA supports the continued development of draft rules and initiatives by IDEM, but believes the processing of comments and development of a final rule should be by the board, independent of the IDEM. This will likely require compensation to board members. In addition, the boards should insist on a proper and thorough economic analysis that includes the impact on the regulated community for all rulemaking activities.

Federal Regulation Adoption

Issue/Status: Most of the environmental regulations businesses must comply with originate at the federal level. They have common names such as Clean Air Act, Clean Water Act, etc. States are then required to meet the criteria in rulemaking.

Problem: In years past, rulemaking in Indiana (to comply with federal standards) has gone well beyond what was required, with little apparent benefit. To counteract excessive regulation beyond federal requirements, the regulated community expends considerable time and resources to obtain an end product that is more similar to the federal standard. At times, industry has asked the legislature to intervene on specific issues so that the final work product more closely resembles the federal law. The legislature has intervened on several occasions. The time and resources spent by the legislature and the regulated community to correct excessive regulation is inefficient and imprecise.

IMA Position/Solution: The legislature should enact a law that would preclude the adoption or enforcement of a regulation, non-rule policy, or guidance document more stringent than the corresponding federal regulation unless the general assembly enacts authorizing legislation.

Interpretation of EPA Environmental Rules Adopted by Reference

Issue/Status: Indiana adopts by reference federal regulations for programs it is implementing such as programs under the Clean Air Act and the Resource Conservation Recovery Act.

Problem: In some instances, EPA may have issued interpretations of the federal regulations or discussed interpretation in the preamble to the federal regulations Indiana has adopted by reference. However, Indiana courts have held that these rules are subject to independent IDEM interpretation, as if IDEM had promulgated them itself. Unless IDEM and/or the rulemaking boards specify that IDEM will recognize an interpretation EPA has issued, the regulating community has no idea what interpretation IDEM will put on these rules. Moreover, the regulated community generally has not had an opportunity to make specific comments about how IDEM will interpret the rules being adopted by reference.

IMA Position/Solution: The environmental boards, when adopting a federal regulation by reference, should specifically state that IDEM is to recognize any interpretation EPA has given on a rule the boards adopt by reference.

Environmental Insurance Coverage

Preamble: Insurance plays an important role all types of businesses, including manufacturing. Protection against loss provides the necessary security to invest capital for long-term gain. Insurance policies with sufficient financial backing are vital to the overall economy.

Issue/Status: Over the past 20 years, the scope of insurance coverage for environmental pollution under commercial general liability policies has been frequently litigated. Insurance companies have historically included "pollution exclusion" language in policies in order to limit exposure. Pollution is difficult to define in a contract for insurance.

As a general principle, ambiguity in a contract is construed against the drafting party. Courts have encouraged the insurance industry to utilize a better pollution definition. Many insurers have begun to include a pollution exclusion very similar to one noted by the Indiana Supreme Court in 2012. To this point, the new pollution exclusion has not been tested in court.

IMA Position/Solution: Because insurance is a matter of contract, and the latest pollution exclusion language has not yet been litigated, the Indiana legislature should not act. Because the insurers have already made changes to current and prospective policies, there is no public policy matter to be determined. A legislative change dictating what policy terms mean retrospectively is not appropriate and would cause even more litigation. Determining whether an individual case of pollution is covered by the insurance contract is very fact specific and is a matter of law that should be resolved by the courts. Legislation adopting a specific definition of pollution could also lead to repeated efforts in the future to amend the statutory definition based on the outcome of specific court cases. The IMA opposes legislative action to define pollution for use in commercial general liability contracts. The IMA opposes legislative action that would retroactively limit insurance coverage based on pollution exclusion.

Environmental Justice

Issue/Status: Environmental justice, as defined by EPA, is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income. In response to concerns raised by various stakeholders, the federal government is enhancing its approach to environmental justice by making it central to regulatory actions, permitting decisions, enforcement, and grant awards. IDEM has put the IMA on watch as they are being pressured from the EPA to introduced EJ concepts into their permitting guidelines. EPA has issued an FAQ document in which they outline to federal, state, and local environmental permitting programs ways in which to integrate environmental justice and civil rights into environmental permitting processes.

Problem: Meaningful engagement with communities, including environmental justice communities, is critical to ensure that we are meeting their needs and expectations. However, the IMA is concerned that EPA's position on an entity's compliance with federal environmental laws does not necessarily mean a company is complying with federal civil rights laws. As of now, the EPA and various NGO's are mobilizing community groups to fight IDEM on issuing new and renewal air permits for industry.

IMA Position/Solution: The IMA's general policy is for less government regulation and believes that regulated entities should have a strong voice in response to any new requirements to address environmental justice. Regulated entities should be given fair notice, and opportunity to comment, on any changes in the federal government's approach to environmental justice to affirm the societal benefits of job creation and economic growth. The IMA opposes delays to permit approval when permittee complies with all mandatory environmental objectives outlined in the permit.

Environmental and Social Governance

Issue/Status: Environmental and Social Justice (ESG) is a non-financial performance indicator used to measure an organization in terms of its sustainability goals and ethical impact. ESG is becoming increasingly utilized by manufacturers as customers, investors, and regulators are looking at a company's environmental sustainability as a value indicator for an organization. ESG goals are self-imposed goals or priorities from a company; they are not mandates that come from the federal or state governments. ESG is used by a variety of stakeholders to measure and compare ESG performance. Current ESG ratings are not federal regulated. Some large financial institutions are choosing to make investments based in part on ESG indicators. This has restricted access to financial markets for some fossil fuel businesses, which may have a negative effect for consumers in energy markets through the limitation of supply of otherwise cost-effective fuels.

IMA Position: The IMA supports policies that allow market forces and consumer demand, through established private business processes, contracts, and association to guide decisions and believe those should suffice to provide a fair marketplace. The IMA opposes governments mandates on ESG. The IMA also opposes government policies which give ESG a valuation that can be used in ratings, credit indicators, or as an economic force in which to base decisions.

Air Issues

Global Climate Change

Issue/Status: Since the U.S. Supreme Court's ruling in Massachusetts v. EPA that USEPA has authority to regulate greenhouse gases (GHGs) under the Clean Air Act, the USEPA intends to use that authority to establish GHG emission reduction requirements for the power sector. The prevailing view among regulated industry is that regulation by USEPA under the existing Clean Air Act is extremely costly and will result in significant regulatory gridlock. A legislative solution by Congress would seem more appropriate. Due to Indiana's high reliance on manufacturing and coal as an energy source, the potential for GHG legislation to impose significant and disproportionate financial burdens on Indiana is very high. Even the most optimistic cost estimates for a cap and trade-based emission reduction program will mean costs in the hundreds of billions of dollars. In addition, regulating GHGs in the U.S. but not in developing nations such as China or India will cause economic dislocation to those countries, which in turn will result in increased global GHG emissions.

IMA Position/Solution: The IMA is greatly concerned with the potential costs of GHG regulation or legislation, and the disproportionate impact of those costs on Indiana manufacturers and electric rate payers. Despite recent Supreme Court rulings, the IMA strongly believes GHG's should not be regulated under the existing Clean Air Act but should be addressed legislatively. The IMA opposes any legislation and regulation that would increase costs on Indiana manufacturers and electric ratepayers without mitigation of those costs. In addition, the IMA opposes any legislation that does not provide measures to protect Indiana manufacturers from the competitive advantages developing nations will have if they do not adopt GHG emission reductions. The IMA opposes any unilateral or overall emission reduction mandates that are not based upon sound science and produce no demonstrable environmental gains. The IMA supports cost-effective programs to increase energy efficiency and alternative energy choices that are used to implement GHG emissions reductions.

Automatic Implementation of Federal Regulations

Issue/Status: USEPA has adopted air permitting requirements for sources of newly federal regulated pollutants based on an interpretation of the Clean Air Act stating that some form of permitting is required once EPA begins regulating a new pollutant. IDEM has made public statements about the automatic implementation of new federal rules that may not be legally correct.

IMA Position/Solution: IDEM should assert that the Indiana Constitution prohibits the automatic adoption of federal requirements in Indiana.

Implementation of National Ambient Air Quality Standards for Sulfur Dioxide (SO2)

Issue/Status: In June of 2010, USEPA replaced its existing 24-hour and annual SO2 air quality standards with a significantly more stringent one-hour standard. EPA has instructed states that not only will ambient monitoring data be used to make attainment and nonattainment designations, but dispersion modeling must also be used to confirm whether an area is attaining the standard. Counties without monitoring data or modeling analysis will be designated as "unclassifiable." While not providing adequate guidance, EPA is requiring dispersion modeling analyses to demonstrate attainment with the NAAQS when states submit their State Implementation Plans. For a one-hour standard, dispersion modeling typically results in overly conservative estimates of air quality impacts, so it is quite possible that numerous counties in Indiana would be designated nonattainment or the SIP development will result in Indiana sources having to install SO2 emission control systems or take restrictions on the kinds and amounts of fuels that may be burned. IDEM has indicated it does not want to create unnecessary issues for counties and that it intends to work with the regulated community on developing the SIPs. IDEM estimates that 75 facilities in 42 counties will be affected by this standard. The IMA believes there will be more.

IMA Position/Solution: Because of the likelihood of overly conservative impacts, the IMA does not believe dispersion modeling is an appropriate method for determining attainment and should not be used. IDEM should focus its activities for determining attainment Issue/Status on those counties or similar areas that are clearly non-attainment. Other counties should be left as unclassified. IDEM should establish a workgroup to ensure that regular updates are provided to the affected sources regarding attainment recommendations, additions to the existing monitoring network, and SIP development activities, so that sources will be well informed and able to provide feedback to the agency as they proceed with the SIPs.

Implementation of National Ambient Air Quality Standards for Ozone, NOx, and PM2.5

Issue/Status: IDEM is responsible for developing and enforcing State Implementation Plans [SIPs] to attain National Ambient Air Quality Standards. This process includes designating areas as attainment or nonattainment. Non-attainment designations make economic development more difficult. In addition, the designation triggers regulatory requirements that may place significant burdens on local industry.

IMA Position/Solution: Indiana should proceed cautiously in its development of SIPs for ozone, NOx and PM2.5 and/or non-attainment classifications. Indiana should refrain from imposing additional ozone, NOx, and PM2.5 requirements until the impact of the NOx SIP Call, Clean Air Interstate Rule, national diesel engine and gasoline engine standards, the federal utility emission reduction programs, and other regulatory programs have been evaluated. Finally, Indiana policy leaders should continue to encourage federal Clean Air Act amendments to eliminate non-attainment designations for regional pollutants since science has demonstrated this approach does not work. Additionally, IDEM should consider the utilization of a workgroup approach to ensure that the affected sources are well informed and able to provide feedback to the agency in a timely manner.

Compliance Monitoring Requirements

Issue/Status: Construction and operating permits (including FESOPs and Title V permits) issued by IDEM have included rigorous compliance monitoring terms. EPA issued its Compliance Assurance Monitoring (CAM) rule, and IDEM has issued periodic monitoring guidance for emission units not subject to CAM. In addition, IDEM has begun a rulemaking action to promulgate compliance monitoring requirements for permits. The compliance monitoring requirements in construction and operating permits are based on informal policy guidelines developed by IDEM.

These guidelines differ substantially from the EPA CAM rule in terms of applicability and detail. Indiana manufacturers have found that in some cases, the terms are excessively detailed and inappropriate given the level of emissions from the sources or the type of operation involved. Further, a competitive disadvantage is being created because other Midwestern states have not included excessive and detailed compliance monitoring terms in their permits. In addition, Indiana generally does not recognize legitimate periods of monitoring downtime and deems any failure to collect required monitoring data as a violation of permits and rules.

IMA Position/Solution: Construction and operating permits should not include detailed and excessive compliance monitoring terms without regulatory authority for such terms. There should be no compliance monitoring requirements for trivial activities, insignificant activities and low-emitting emission units. Compliance monitoring requirements should apply only to emission units that have the potential to cause significant air quality impacts, and such requirements should correspond to the level of potential impacts. Gap-filling Title V compliance monitoring should not be required on a once-per-shift basis, and duplicative monitoring requirements should be eliminated. The IMA supports creation of an incentive program for monitoring or other alternatives to reduce the frequency of testing, paperwork, recordkeeping, etc., when historical data shows compliance. IDEM should reduce the amount of stack testing they currently require. Compliance monitoring requirements should provide allowances for failure to collect monitoring data if the failure is due to equipment malfunctions, maintenance, and other quality assurance activities.

Construction and Operating Permits

Issue/Status: Indiana's air pollution control regulations establish a multitude of permitting requirements including construction permit programs. The time delays and administrative procedures of the Major New Source Review, Minor New Source Review and operating permit programs, such as Title V and FESOP permits impede a company's ability to make new products or improve operations and can affect a site's economic vitality.

IMA Position/Solution: The IMA strongly believes the Indiana permit programs must provide as much operational flexibility as authorized by state and federal law, and should not impede growth or responsiveness to market changes. The IMA supports requirements to ensure that its construction and operating permit rules do not create duplicate or overlapping procedural requirements. The IMA supports IDEM permit programs, which include operational flexibility provisions and streamlined permit modification procedures. The IMA supports efforts to make comprehensive changes to the air permitting rules so that the rules are more streamlined and efficient. It is crucial for IDEM to meet permit accountability time periods for all permits, regardless of whether it is for a new source or a modification to an existing source. Tactics such as requesting additional information to stop the time review clock must be minimized or avoided altogether.

Title V Operating Permits

Issue/Status: The Title V operating permit program imposes significant costs on Indiana businesses and IDEM. In addition, permit revision processes can delay important projects. Companies must expend significant effort to revise permits whenever rules change. IDEM has more than 15 years of implementing the Title V operating permit program, and has the experience base to understand the strengths and weaknesses in how the program is implemented. In addition, the U.S. EPA Title V Task Force issued a report that describes more than 100 recommendations for improving the program.

IMA Position/Solution: IDEM should evaluate what changes it can make to its implementation of the Title V permit program in order to reduce the cost and increase the efficiency of the program. It should adopt Title V Task Force recommendations that achieve this objective. In particular, IDEM should revise its approach for determining the applicability of MACT and other complex rules, and revising its Title V rules to allow off-permit changes. Furthermore, IDEM should revise its rules so it may process more permit revisions through administrative permit amendments and minor permit revisions instead of significant permit revisions.

Non-Attainment Areas

Issue/Status: Ambient monitoring data show that some Indiana counties are meeting the National Ambient Air Quality Standard for pollutants for which they have been designated as non-attainment. Maintaining the non-attainment designation for these counties unfairly creates a stigma of "dirty air" for them and inhibits economic growth and development. In addition, new National Ambient Air Quality Standards have the potential to create new nonattainment areas.

IMA Position/Solution: The IMA supports immediate redesignation of any county for which monitoring data supports redesignation to attainment Issue/Status.

Definition of "Source" Contiguous or Adjacent Properties

Issue/Status: Under federal permitting programs, such as Title V of the Clean Air Act and Prevention of Significant Deterioration (PSD), multiple-plant sites may be considered a single source if they meet certain criteria identified in state and federal rules. One of the criteria for determining whether multiple sites can be considered a single source is whether the facilities are on "contiguous or adjacent properties." IDEM is interpreting the definition of contiguous or adjacent properties to include sources far apart in physical distance. This is creating significant new permitting issues with no justification.

IMA Position/Solution: IDEM should only consider sites that share a common property line or touch at a corner or are divided only by a public right-of-way as "contiguous or adjacent properties."

Opacity Rule: Applicability

Issue/Status: Opacity rules (visible emission standards) have been a long-standing means of regulating air pollution. The standards essentially serve two purposes: to minimize the "public nuisance" element of visible smoke, and to serve as surrogate indicator for a source's ability to meet particulate matter emission limits. The Indiana opacity rules do not specify an applicability threshold to distinguish which sources are subject to the standards and which are not. As a result, IDEM interprets the rules to apply to all emission sources in the state, regardless of the sources' potential to emit particulate matter. With the advent of the Title V, FESOPs and Source Specific Operating Agreements, applying the opacity rule to all sources of emissions creates far more economic and administrative burden than air quality benefit gained. The compliance monitoring and compliance certification elements of Title V force companies to implement rigorous procedures to assure compliance with the standard, even if it is unlikely the standard would ever be exceeded, or even if violation of the standard would not cause any public health threat. In addition, there are now many sources subject to NESHAP rules that establish opacity requirements that in some cases create inconsistent or duplicative requirements compared to Article 5.

IMA Position/Solution: The Indiana opacity rules should be revised to have clear applicability thresholds that reflect the likelihood of the source to cause significant impacts on air quality. In addition, the opacity rules should be revised to exempt sources subject to NESHAP opacity requirements and, non-major sources from the Article 5 opacity requirements, similar to the exemption that exists for sources subject to NSPS opacity limits.

Opacity Rule: Defining Compliance

Issue/Status: For many operations, in particular coal-fired boilers, it is virtually impossible for a source to maintain opacity below regulatory levels 100 percent of the time. The opacity limits in rules and permits are usually expressed in terms of very short-term time frames, such as six minutes. When a source uses Continuous Opacity Monitors, every brief instance of excess opacity is recorded and reported to IDEM. Typically these brief periods of excess opacity last minutes not hours, and are indicative of short-term, easily corrected problems. These incidents are not indicators of sustained compliance issues. In such circumstances, a different type of standard, expressed over a longer period, with a different compliance measure may make more sense and provide equal or better environmental protection.

IMA Position/Solution: The Indiana opacity rules should allow sources that use Continuous Opacity Monitors to exceed applicable opacity limits for a small percentage of time in recognition that there may be brief periods when a source is unable to comply with the opacity limit without causing health issues.

Contractor Issue/Status at Title V Sources

Issue/Status: Many large companies use contractors at their plant sites to perform functions to support the primary site operation. In many cases, the contractor operations are incidental to the overall function of the site. IDEM has interpreted the definition of Title V source to require that the contractor's operations be included within the scope of the primary operation's Title V permit. Some industries challenged this position in court and won. Requiring a contractor's activities to be included within the scope of the overall site Title V permit imposes an unreasonable liability on the site owner. The responsible official for the site owner cannot reasonably certify the compliance Issue/Status of the contractor's activities. Furthermore, IDEM has informed contractors that it will not issue Title V permits to contractors who operate on these sites unless the contractor's activities are incorporated into the site owner's Title V permits. This position delays the implementation of new activities and services at these complex sites.

IMA Position/Solution: The IMA supports treatment of contractors as independent permit holders, and requests an open dialogue with IDEM to develop appropriate criteria for determining which contractors should be treated independently.

Multi-Pollutant Legislation

Issue/Status: Numerous new air quality regulations for multiple pollutants and regional haze have been adopted recently that will require significant emission reductions from the electric utility industry. Individually these requirements will produce duplicative requirements and conflicting deadlines. Single-pollutant regulations offer little flexibility for use in market mechanisms and do not encourage new technologies controlling more than one pollutant. Further, single-pollutant regulations are inconsistent – creating uncertainty in planning, which drives us further away from sound economic and energy policies that rely on local energy sources.

IMA Position/Solution: The IMA supports federal multi-pollutant legislative concepts that reduce emissions while replacing conflicting regulations with one concise set of rules with a multi-year planning horizon. This approach is consistent with a viable and affordable fuel mix needed to maintain a robust manufacturing economy. IMA opposes multi-pollutant bills that include carbon dioxide mandates and set unreasonable emissions targets and timetables.

National Emissions Standards for Hazardous Air Pollutants (NESHAP)

Issue/Status: New regulations must be adopted in Indiana that regulate the emissions of Hazardous Air Pollutants (HAP) for specific industrial sources. The regulations are technology driven rules produced from more than ten years of federal rulemaking designed to greatly reduce HAP emissions. State level modifications to the federal rules create a greater burden on the businesses of Indiana, creating an economic disadvantage without any commensurate environmental benefit.

IMA Position/Solution: The IMA supports the efficient incorporation of federal NESHAP rules as promulgated, but not more stringent than the federal regulations.

Accurate BACT (Best Available Control Technology) Analyses

Issue/Status: When conducting the economic analysis as part of BACT permit reviews, IDEM has ignored fluctuating commodity prices. This results in evaluations that overstate the cost-effectiveness of some emission control systems. As a result, some sources may be required to install these systems when they are not cost effective.

IMA Position/Solution: IDEM should use a wider range of commodity costs when conducting BACT evaluations to reflect the likelihood of variable costs.

Water Issues

Antidegradation Procedures for Special Designation Waters/Outstanding State Resource Waters

Issue/Status: A final antidegradation rule was adopted by the Indiana Water Pollution Control Board (the Environmental Rules Board as of January 1, 2013) in 2012. These rules will require additional restrictions on new or increased discharges to water bodies with water quality better than the applicable standards. The new rule applies a flat one-time 10 percent available unused loading capacity to all dischargers. The rule did not include special designation provisions, which can impact this antidegradation rulemaking. In September 2013 U.S. EPA announced proposed rules that would only require states to provide guidance on antidegradation implementation procedures.

Problem: The antidegradation rule may require more stringent limitations than established by water quality standards and national technology-based effluent limitations. Dischargers to specially designated surface waters in Indiana are subject to restrictions and requirements above and beyond those applied to all other surface waters of the state and may require that existing water quality be maintained. This restriction means that communities within a watershed that receive a special designation will have burdensome permit requirements compared with other communities. The program also covers wetlands and 401 water quality certifications. It is not known how IDEM will be applying "narrative" standards in antidegradation decisions. Antidegradation demonstrations have been reviewed by a single IDEM staff person who has been relying on unreasonable default EPA opinions on reasonable/practical alternatives analyses and economic /cost benefit analyses. IDEM has indicated that it has the ultimate power to determine when a new or increased discharge is socially or economically important.

IMA Position/Solution: In light of the social, economic and land use implications of the antidegradation rules, IMA believes that no water body in an urban or developed area should receive a special designation unless there is substantial local support from all segments of the community. Special designations must be assigned to only surface waters that truly exhibit exceptional water quality. The rules and any associated guidance should be reasonable, understandable and predictable and not delay issuance of permits. IDEM needs to improve how evaluates and approves reasonable/practical alternatives analyses and economic/cost benefit analyses.

General Permits

Issue/Status: On July 25, 2012 the Indiana Water Pollution Control Board (the Environmental Rules Board as January 1, 2013) preliminarily adopted a regulation that would repeal all existing NPDES general permits. The State of Indiana has to move from its existing system of general NPDES permits by regulation to general NPDES permits that are issued administratively for five-year periods by IDEM to meet its federal permit issuing obligations. The problem is that IDEM has requested the Board repeal each of ten existing EPA-approved general NPDES permits that have been in effect for decades before IDEM has issued the corresponding administrative NPDES general permit. IDEM has been working with EPA on what these new general permits should contain and how there issuance should meet antidegradation rules. IDEM has set one general permit to EPA for review, and EPA told IDEM that this draft permit was deficient

Problem: After adoption of the repeal, Indiana dischargers will be unable to obtain a federally enforceable general NPDES permit from the State of Indiana for an uncertain time period. Until IDEM does issue an EPA-approved administrative general NPDES permit and that becomes effective, the only NPDES permit that State would have authority to issue for these dischargers is the individual NPDES permit. According to State law, a party with an existing general permit that is repealed is required to continue operating under the terms and conditions of the repealed permit. IDEM is trying to fill the gap between EPA-approved NPDES general permits with conditions enforceable by the State, but not by USEPA. To avoid the chance of legal vulnerability to Indiana dischargers for operating without a federally-enforceable NPDES permit, the Board should continue to delay the repeal of each existing regulatory general NPDES permit until there is a valid EPA-approved administratively issued permit that a discharger can file a notice of intent to operate under. Otherwise, parties either can rely on enforcement discretion by USEPA and citizen advocacy groups monitoring Clean Water Act compliance during the gap between general permits or parties can obtain an individual NPDES permit.

IMA Position: IDEM must modify or withdraw the preliminarily adopted rule that repeals all general permits simultaneously.

Indiana Surface Water Quality Standards

Issue/Status: For more than 13 years, Indiana has needed to revise its water quality standards for both the Great Lakes and non-Great Lakes basins. IDEM withdrew its 1999 triennial review rulemaking and has divided the subject material into several smaller rulemakings. IDEM claims that the scope of the triennial review process has proven to be large enough to warrant a number of individual rulemakings, rather than one all-inclusive rulemaking. The first revisions to these rules were made as a result of the "fast track" rulemaking conducted in 2005. The Indiana Department of Environmental Management (IDEM) has been working on surface water quality standards for nitrogen and phosphorus and is expected to propose rules in 2013. IDEM is considering the application of a general uniform technology-based discharge standard for removing phosphorus for all municipal discharges to improve water quality. IDEM is a signatory to several Ohio River Sanitary Commission (ORSANCO) initiatives. In September 2013, EPA also issued new lower water quality criteria for ammonia.

Problem: The water quality standard and water discharge permitting rules are outdated; and in some cases, they lack scientific basis. Companies are experiencing permitting issues with selenium, aluminum and sulfate criteria. Concerns continue over IDEM's willingness to further conduct timely updates to the water quality rules. In many cases, suggested rule changes can eliminate flexibility and practicality and increase compliance costs without adding environmental benefits. IDEM had been considering the adoption of reference condition-based nutrient criteria, which is not consistent with the Clean Water Act, which requires effects-based criteria (Sec. 304). The uniform technology-based limit for phosphorus removal being considered by IDEM is based on controls applicable to municipal facilities discharging to lakes or EPA opinion and without a reasonable cost analysis. The new criteria (especially ammonia) may create additional problems for companies that need to remove "nuisance" mussels. IDEM has not been working on water quality issues as agreed to with ORSANCO. This in turn has placed a disproportionate emphasis on wastewater dischargers.

IMA Position/Solution: The IMA supports the adoption of surface water quality standards that are: 1) based on proper designated stream uses; 2) scientifically defensible; 3) based upon waters of Indiana; and 4) demonstrate that water quality benefits do not require unreasonable costs. IDEM also needs to correctly implement Senate Enrolled Act 431 (2000) with regard to standards. IDEM should, in no way, try to adopt the U.S. EPA reference condition criteria approach for nutrients, as it has no credible scientific basis. It should be noted that many nutrients do not impair water quality by themselves and are dependent on many other factors. IDEM should not move forward with uniform technology-based limit for phosphorus removal for all dischargers, as there is not adequate technology and cost information to substantiate its application.

Storm Water Regulation

Issue/Status: Municipalities are implementing the community education and outreach provisions of the storm water rules and enforcement has been increasing. The review of storm water associated with construction activity erosion control plans was transferred to the Department of Agriculture and is requiring significant staff resources. Permittees have been getting multiple inspections by different agencies with conflicting interpretations. EPA has also issued new technology based limits for discharges of storm water from construction activity, but withdrew some of the numeric limits. IDEM is also being advised by EPA to revise storm water general permits to include guidance from the EPA multi-sector general permits (MSGPs) and some new boilerplate language. IDEM is also requiring MSGP terms in individual NPDES permits. EPA has also been telling states to use Best Management Practices (BMPs) in all storm water permits. However, it has recently issued guidance to require numeric water quality-based limits.

Problem: Many issues are still unresolved in the municipal system rules. The rules associated with municipal separate storm sewer require local jurisdictions to adopt local ordinances and permitting programs. In many cases, new control and permitting obligations will be required. In some cases, a business may be required to get a permit from both IDEM and the local jurisdiction. In many cases, local authorities will be requiring fees for these programs based on unexplained assumptions. In the construction activity rules, there is no appeal process to deal with unreasonable soil and water conservation service requests to amend erosion control plans. IDEM will also have to make a decision about whether these municipal storm water discharges that contain storm water associated with industrial activity will not be subject to antidegradation rules. Permittees holding storm water general permits need consistent inspection criteria when being inspected by multiple agencies and should not have to comply with EPA guidance that is not cost-effective. Individual NPDES permit holders should not be subject to confusing and expensive MSGP requirements in Individual NPDES permits and should not require them in a rule.

IMA Position/Solution: EPA needs to be using EPA historical guidance for using BMPs. IDEM and the Water Pollution Control Board should reevaluate the storm water rules as they are unnecessarily more restrictive than the federal rules and create duplicative permitting and compliance burdens. Any fees assessed to support these rules and inspection interpretations must be clearly justified and utilized exclusively for the purpose of the program. These storm water permits should not be subject to antidegradation rules. IDEM should not propose rules that incorporate EPA multi-sector guidance without considering cost-effectiveness. IDEM should drop the MSGP requirements in individual permits and should not require them in a rule.

Expansion of the Clean Water Act Coverage to Regulate of Pollutants from Groundwater Directly Connected to Surface Water

Issue/Status: EPA is considering statements regarding whether pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that have a direct hydrologic connection to jurisdictional surface waters to be subject to regulation under the Clean Water Act ("CWA"). EPA published its notice requesting comments in the Federal Register on February 20, 2018.

Problem: Groundwater protection issues should be addressed under Federal and State programs designed to address those concerns, not the NPDES Program

IMA Position/Solution: The IMA believes that there is an urgent need for EPA to pronounce an unequivocal and constitutionally-sound position, and subsequently initiate a formal rulemaking, to clarify and memorialize the following five key principles:

1) The CWA does not directly regulate nonpoint sources;
2) The CWA does not indirectly regulate nonpoint sources even if there is a hydrologic connection to surface waters;
3) The CWA does not otherwise authorize EPA to regulate discharges of pollutants to groundwater that have a direct hydrologic connection to surface water;
4) "Waters of the United States" does not include isolated, non-tributary groundwater; tributary groundwater; or hydrologically-connected groundwater; and
5) Regulation of discharges to groundwater, even where there is a hydrologic connection to surface water, can be accomplished only by a legislative change, and not by Agency or judicial interpretation.

Application of Best Professional Judgment

Issue/Status: Under the authority of the Clean Water Act, IDEM must often use its best professional judgment (BPJ) to, among other things, assess technologies such as wastewater treatment and impingement and entrainment reduction , conduct water use attainability analyses, develop water quality standard implementation programs, and apply antidegradation standards.

These determinations must often be made prior to the adoption of federal rules that would otherwise change or contradict the results of IDEM's BPJ.

Problem: IDEM does not always have the resources to conduct appropriate technology assessments, use designations or other evaluations that require BPJ. EPA is in the process of developing or updating water programs that could result in requirements that may contradict IDEM's BPJ determinations. For example, EPA has proposed revisions to the steam electric power generating effluent guidelines. These guidelines establish wastewater discharge limits that are based on an evaluation of the "best available" treatment technologies that the agency believes are economically achievable. Another example includes the agency's proposed 316(b) regulations, which require the use of BPJ to determine the best technology available for minimizing adverse environmental impact from cooling water intakes. These determinations are not exclusive to the electric utility industry and could affect other industries. Since these rules are not yet final, IDEM must make its own BPJ determinations as NPDES permits come up for renewal. EPA has encouraged states, to make these determinations on its own, for example the June 7, 2010 Hanlon memo regarding permitting of wastewaters associated with Flue Gas Desulfurization (FGD) systems and Coal Combustion Residuals (CCRs),; however, the results of these determinations are often subject to civil suit.

IMA Position/Solution: IDEM should exercise its BPJ authority with great caution and in cases where federal rulemaking is eminent, it should delay making any determinations that may contradict federal requirements or could require future costly changes.

Ground Water Quality

Issue/Status: The Water Pollution Control Board (the Environmental Rules Board as January 1, 2013) adopted ground water quality standards in August 2001. Five state agencies (DNR, IDEM, Indiana Department of Health, Office of the State Fire Marshall and State Chemist of the State of Indiana) now need to adopt rules to implement said standards. IDEM is trying to adopt Maximum Contaminant Levels (MCLs) for specific a substance that, in effect, requires ground water to meet standards established for drinking water. IDEM never contemplated a link between these standards and any impaired zones. These standards also create potential unworkable and complex issues for restrictive covenants.

Problem: The adopted ground water quality standards can be broadly interpreted with regard to scope and applicability. This broad interpretation can cause inappropriate application of the standards and confusion among the five state agencies and the regulated community. Adoption of MCLs to all ground waters is not appropriate as these are numbers for drinking water.

IMA Position/Solution: The IMA supports rules that encourage the development of "brownfield" sites. The implementation of the adopted rules should be clear in scope and be based on practical standards and practical points of application. These rules should provide the necessary guidance for determining the appropriate ground water quality, but should not create new unwarranted mandates on industry.

Impaired Waters Determinations/Total Maximum Daily Loads (TMDLs)

Issue/Status: IDEM is required by federal law to implement a TMDL process by which it determines the pollutant load that an "impaired" stream segment can carry and still support the uses designated by the state. Based upon the loads established from this process, IDEM allocates pollutant loads to point and non-point sources to bring pollutants causing impairments down to levels that support the designated uses of the water body. HEA 1162 (2009) provides provisions that allow for public participation in the listing of new pollutants found to potentially be above a standard during a TMDL investigation. IDEM continues to state that it does not have the resources to verify that designated uses of water bodies are appropriate. EPA has issued guidance to the States on development of their 2014 303(d) lists of impaired waters and has included information on listing waters based on failure to meet antidegradation requirements.

Problem: IDEM policies are unclear and subjective about data requirements to list or delist a water body. To complicate matters, the U.S. EPA has delayed issuing new rules or guidance about how to develop and implement TMDLs. The Water Pollution Control Board (i.e. the new Environmental Rules Board) has not met statutory deadlines for rulemaking. Delays in issuing these rules are causing significant issues and could require the agency to unnecessarily repeat TMDL work. Regulators will be trying to use data and information to indicate that a water is not meeting the State's requirement for "maintenance and protection" of water quality. This will lead to further confusion as waters that meet numeric standards for designated uses will be listed as impaired.

IMA Position/Solution: IDEM should take a long, careful look at the water quality data of each of the state's water bodies in order to take full advantage of the program flexibility offered by EPA. The Environmental Rules Board must adopt rules consistent with statutory requirements and deadlines that:

- Set a minimum data quality and quantity requirements for listing, MDL development, and delisting of streams.
- Identify appropriate models and tools for development of TMDLs.
- Define the process for listing and delisting streams after the initial list is established.
- Verify that the designated use is appropriate for the stream.
- Verify that the water is not currently attaining the use standards.
- Allow for public participation in the listing and delisting process and TMDL process.
- Provide flexibility in permitting for new and increased discharges, including allowance trading.

Water Diversions from the Great Lakes

Issue/Status: The Council of Great Lakes Governors signed a compact in December 2005 that specifies management technique for water withdrawals from the Great Lakes. In 2008, the Indiana General Assembly enacted legislation to adopt the Great Lakes Compact. The legislation included additional language specifying state implementation requirements. The other seven Great Lakes states' legislatures also have adopted the Great Lakes Compact. In September 2013, the Indiana Natural Resources Commission (INRC) published in the *Indiana Register* a notice to amend state rules to require new water withdrawal permitting thresholds and mandatory programs for promoting water conservation and efficiency. U.S. EPA to evaluate ways to further control air emissions with wet-gas scrubbing technologies.

Problem: The compact is a legal agreement between the eight Great Lakes States that will impact current and future uses of surface and ground water within the Great Lakes basin. Within Indiana, existing and future users in the Lake Michigan and Lake Erie basins will be impacted by new permitting and reporting requirements, as well as water conservation programs, for in-basin uses. Furthermore, certain provisions of the compact and its implementation requirements for the Great Lakes basin, such as the water conservation measures, may be considered a template for all waters of Indiana. Some industries are expecting to have relied on increased consumptive use of water to meet future air regulation requirements and are concerned that U.S. EPA does not recognize the complexities of the Great Lakes Compact and implementing state rules.

IMA Position/Solution: The IMA recognizes the importance of the Great Lakes as a natural resource for all uses, including manufacturing processes. The INRC should make as many of the water conversation provisions in the new rules voluntary. The IMA will monitor and participate in rulemaking efforts by the Indiana Department of Natural Resources and Natural Resources Commission to implement the compact to assure members have cost-effective access to water resources.

Proper Designation of Water Uses

Issue/Status: The Clean Water Act requires each state to designate uses for "navigable" waters and conduct use attainability analyses for waters that do not meet their uses. The use category determines the ambient water quality standards to be achieved in the water body. Permit limits are then designed to assure that those ambient standards are met. In 1990, IDEM eliminated partial-body contact recreation uses and designated all waters of the state for aquatic life and full-body contact. These designations establish unrealistically stringent ambient water quality standards throughout the state without regard to any reality associated with water uses. There is a process under EPA rules to revise designated uses; however, IDEM continues to state that it does not have the resources to change the designation of water bodies. In 2008 a bacteria rule was issued to allow partial-body contact recreational use designations for recreation.

Problem: There are numerous stream segments in Indiana that simply do not have any reasonable potential to attain these high level of uses, and requiring permit limits to meet them is an unreasonable and wasteful expenditure of limited resources. Improper judgment about designated uses of waters should be based on "actual" uses. Cost-effective and reasonably protective actions should be properly considered instead of requiring the elimination of discharges based upon widespread social and economic impact.

IMA Position/Solution: IDEM should develop use and partial-use categories (tiered aquatic life uses) and criteria that reflect actual uses for Indiana's water and conduct a systematic review of waters to designate uses that can reasonably be expected to be achieved. IDEM needs to work with local government to fully utilize tools to revise designated uses. A system to implement a streamlined process to conduct and approve use attainability analyses should be utilized by IDEM to properly change designated uses of waters.

Combined Sewer Overflows (CSO)

Issue/Status: IDEM and the U.S. EPA are issuing permits and taking enforcement actions that specify requirements for municipalities with combined sewer systems, concerning combined sewer overflows (CSOs) during wet weather events. The General Assembly has adopted a statute, Senate Enrolled Act 620, (SEA 620, (2005), which is intended to promote a reasonable approach to addressing these issues. Many cities have implemented new user rates to fund CSO compliance requirements. IDEM is under pressure to make decisions based on widespread social and economic impact to communities in order to implement SEA 620. U.S. EPA has been increasing enforcement action on communities with CSOs.

Problem: Indiana has nearly 100 CSO communities, the highest of all states. Improper judgment about appropriate cost-effective, reasonably protective actions and whether eliminating discharges based upon widespread social and economic impact could have a dramatic negative effect on the

Indiana economy. Improper judgment about the role of industry discharge in these large storm events will also contribute to great economic disadvantages compared to other states. Proper implementation of SEA 620 will play a strong role in minimizing these problems.

IMA Position/Solution: The CSO provisions of SEA 620 will be implemented through new Water Pollution Control Board rules and IDEM guidance. IDEM and the board should establish cost-effective policies and rules that are also protective of water quality and are not administratively burdensome.

Wetlands Management: Federally Regulated Wetlands

Issue/Status: In order to undertake activities to dredge or fill federally regulated wetlands, a Section 404 permit must be obtained from the U.S. Army Corps of Engineers. It is incumbent upon states to issue 401 water quality certificates. In Indiana, IDEM is responsible for this task. IDEM has not issued water quality certification for federal nationwide permits. The Water Pollution Control Board (i.e. the Environmental Rules Board as of Jan. 1, 2013) preliminarily adopted the rules in February 2002 and has taken no further action. U.S. EPA has submitted a draft rule on "waters of the US" to the Office of Management and Budget. EPA has developed a draft "connectivity study," which is intended to provide the scientific basis for the Agency's claims as to jurisdiction over various types of water bodies. That draft study is currently undergoing review by a panel of EPA's Science Advisory Board. IDEM has also been working on rules for isolated wetlands.

Problem: IDEM has continued to interpret 401 authorities to duplicate the Corps 404 process. This is redundant to the federal review process and introduces unpredictability to the person proposing a project. The agency policy is overly restrictive and affects the use of private property. If EPA is successful in its arguments about "connectivity," waters that were not considered covered by many water quality program requirements.

IMA Position/Solution: IDEM should issue a 401 certification for all federal or regional nationwide permits. Compensatory mitigation decisions should be left to the Corps. Redundancy with existing Corps requirements needs to be reduced or eliminated. For all situations allowing a federal Corps Nationwide Permit, IDEM should issue general permits that are no more restrictive than existing Corps Nationwide Permits and waive 401 water quality certification for such permits. The General Assembly should consider legislation to improve efforts on streamlined mitigation banking. Any new federal and state scrutiny of private water bodies must be legally and scientifically based.

Waters of the United States/Waters of the State of Indiana

Issue/Status: In 2015, the Obama EPA issued a rule to "clarify" the scope of "Waters of the United States" for Clean Water Act regulatory and permitting purposes ("WOTUS rule"). Before the rule took effect, it was appealed and stayed as part of a nationwide court order. The rule is based on a series of flawed premises that form an invalid foundation for a remarkable expansion of federal authority.

On February 28, 2017, President Trump issued Executive Order 13778 ("Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States'"). The executive order called for legal action to hold pending legal challenges to the rule in abeyance, required EPA review of the stayed WOTUS rule, and attempts to limit the definition of "navigable waters" in future rulemakings. EPA announced its review the WOTUS rule on March 6, 2017, and promulgated a proposed rulemaking as the first step in a two-step process to implement Executive Order 13778 on July 27, 2017. The proposed rulemaking offers to rescind the 2015 WOTUS rule and recodify U.S. EPA's previous regulation and guidance defining "waters of the United States." 82 Fed. Reg. 34,899. As a next step, EPA will conduct notice and comment rulemaking to reevaluate the definition of "waters of the United States."

Problem: The Obama EPA and Army Corps of Engineers WOTUS rule's expansion of federal regulatory jurisdiction under the Clean Water Act is unacceptable because it increases costs and litigation and reduces economic activity. The rule may impact the ability of businesses to maintain drainage and maintain land use. The regulation excludes "waste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act," without clarity regarding what is included within the phrase "waste treatment system." The regulation provides exclusions for ditches from the definition of "Waters of the United States," which are so narrowly defined that they provide little to no relief in a state such as Indiana in which ephemeral drainage is conducted via ditches in fields or between properties or along roadsides.

IMA Position/Solution: It is incumbent upon IDEM and EPA to clearly explain the activities (i.e., filling, excavating, etc.) that are allowed to proceed without the requirement to obtain a permit to avoid uncertainty about waters subject to Clean Water Act jurisdiction. IMA supports returning to common-sense explanations of "Waters of the United States," without needlessly expanding the scope of these waters. The resulting rule should not limit existing exclusions from the definition of "Waters of the United States." For example, all on-site structures associated with the management of water that transport, store, and treat waters are not jurisdictional when covered by a Section 402 permit; similarly, it should be clear that a "waste treatment system" should include conveyance structures flowing to a treatment facility including retention basins for storm water; and only ditches with perennial flow or that provide base flow for significant periods of the year should be considered jurisdictional waters. IMA supports IDEM involvement in the reconsideration and revision of the WOTUS rule in accordance with these principles.

Waste Issues

Brownfield Redevelopment

Issue/Status: The industrial property redevelopment program created in 1997 was intended to provide incentives for individuals, companies and others to purchase and redevelop contaminated (brownfield) sites. IDEM's remediation guidance is intended to foster the redevelopment of brownfield sites by providing guidance on agency-wide, risk-based decision making for the various IDEM cleanup programs.

Problem: The amount of time necessary to obtain a "no further action" determination under IDEM's cleanup programs impedes private investment.

IMA Position/Solution: IMA supports the implementation of HEA 1162 (2009) into IDEM's remediation guidance and the creation of targeted incentives to encourage private investment in brownfield sites and tax abatement similar to what Michigan has done for remediation cost. Protections against future environmental liabilities must be incorporated into the program in order to encourage property transfer for redevelopment. IMA supports predictable, reasonable risk-based cleanup standards and expedited approvals by cleanup programs in order to foster private investment decisions. The Indiana Finance Authority's issuance of Brownfield (BFPP) letters, site Issue/Status letters, and comfort letters is an example of how brownfields redevelopment can be fostered.

"Need" Requirement for Solid Waste-Disposal Capacity

Issue/Status: The U.S. Supreme Court has determined that states cannot interfere with interstate commerce of solid waste. Bills are now pending in congress to allow states to use other mechanisms to control out-of-state or out-of-county waste.

Problem: The need demonstration is de facto flow control. The need demonstration eliminates competition resulting in a cost increase to consumers (waste generators) without increased environmental protection. The need demonstration has significantly and unnecessarily increased the layering of bureaucratic requirements on permit applicants.

IMA Position/Solution: IMA strongly supports the principles set forth within a free enterprise system where the marketplace, not the government, is allowed to determine the needs. "Need demonstration requirements" should be eliminated.

Toxic Release Inventory Reporting

Issue/Status: Annually, the IDEM Office of Pollution Prevention and Technical Assistance publishes Toxic Release Inventory (TRI) data submitted by selected industries under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). This data includes required reporting for chemicals contained in wastes that are disposed in landfills and deep wells.

Problem: Chemicals disposed within secure, permitted landfills and deep wells are effectively isolated from the environment. As a result, they are not "true" releases, such as discharges to the air and surface waters. This leads to significant confusion among the general public about which releases may pose a threat to human health and the environment. In addition, not all sources of releases to the environment are covered by this reporting requirement, and the data that is reported is only an estimate. Therefore, the information reported by industry is not presented in a format that provides a proper perspective of society's impact on the environment.

IMA Position/Solution: The IMA believes that the Office of Pollution Prevention and Technical Assistance should put the amount of toxic releases reported by industry into proper perspective when they are reported to the general public. IMA believes a distinction between a "release" and proper management of the media should be given as part of the report to the general public.

Solid Waste Management Districts

Issue/Status: In 1990, solid waste management districts were created by the General Assembly to address the shortage of landfill disposal capacity in the state. Today, there are 65 districts that utilize tax dollars, user fees or some combination of the two. The General Assembly has passed legislation to study needed changes to the District law every five years.

Problem: Adequate landfill disposal capacity currently exists in Indiana. The solid waste management districts have not played a role in the development of this capacity. The role of solid waste management districts should be clearly defined and limited.

IMA Position/Solution: IMA believes the solid waste management districts' annual revenues should be capped at a level appropriate to their district population base and should not be allowed to utilize tax dollars as a revenue source.

IDEM Efforts to Recover Administrative Costs for Non-VRP Remediation Oversight

Issue/Status: IDEM continues to seek reimbursement for its oversight costs at non-VRP sites.

Problem: IDEM does not have statutory authority to recover these administrative costs administratively like it does with the explicit provisions of the VRP statute. Nevertheless, IDEM continues to send oversight bills. Most companies do not understand the lack of authority issue, or do not wish to incur the cost to litigate the issue, and therefore pay oversight bills. Moreover, companies have been told that they will not be processed through the program or receive their "no further action letters" or equivalent, unless or until oversight costs are paid. IDEM's bills also have not provided sufficient information to facilitate review and justify payment, even when sending a bill is authorized.

IMA Position/Solution: IDEM should stop seeking reimbursement for oversight costs associated with non-VRP programs until and unless it receives statutory authority to do so. More detail should be included in the VRP bill to allow meaningful review.

Coal Combustion Residuals

Issue/Status: The use of coal in the production of energy creates a residual ash. The ash is referred to as Coal Combustion Residuals (CCR). CCRs are utilized in road construction and building products among other uses. CCRs that are not beneficially reused must be properly disposed of as a waste. How the CCRs are regulated will have a great impact on the cost of handling and disposal. The U.S. EPA is currently considering regulations that could classify CCRs as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) Subtitle C.

Problem: If CCRs are regulated as a hazardous waste, the cost of energy will increase in response to the increased cost of handling and disposal. In addition, the determination that CCRs be treated as a hazardous waste will deter the use of CCRs in a beneficial manner due to liability concerns of the manufacturers. Beneficial use that may continue will be more costly, discouraging the further development of beneficial uses.

IMA Position/Solution: The IMA recommends to U.S. EPA that CCRs continue to be regulated as a non-hazardous waste under RCRA Subtitle D. In addition, the IMA encourages IDEM and the administration to promote the regulation of CCRs as a non-hazardous waste.

Good Character Law

Issue/Status: The Good Character law for solid and hazardous waste permits was first adopted in 1990. It was one of 10 pieces of solid waste legislation passed that year, all of which focused on out-of-state waste. In the 20 years since the law passed, it has been used only two times to deny a permit. One was a political decision and the other could have been denied under the existing law that allows denials for knowing and repeated violations. The law was amended in 2005 to exempt transfer stations from the law if the applicant holds an Indiana permit and is operating another transfer station, solid waste disposal facility or hazardous waste facility in Indiana. Recently the General Assembly expanded good character to livestock operations.

Problem: The requirement to file disclosures for the permit applicant, including its officers, directors and senior management officials and all persons or entities that directly or indirectly own 20 percent or more of the applicant for the five-year period before the application is filed, creates an extensive paperwork burden on applicants. Even if IDEM then approves the permit after review of the disclosures and mitigation, the good character law has frequently been the basis for citizen appeals of permit decisions, due to the broad discretion provided for denial under the good character law. The financial burden caused by this law is not reasonable based on the history of this program and the value that has been demonstrated.

IMA Position/Solution: Either the good character laws should be repealed, or, at a minimum, the laws should be amended to allow all landfill applicants, like transfer station applicants, to be exempted from the law when the applicant holds another transfer station or landfill permit and is already operating in the state.

Recycling

Background: Recycling continues to be an environmental, economic and societal success story led by manufacturers, many of which utilize recycled materials on a daily basis to make new products that add value to the economy. The private and public sectors have invested billions of dollars in infrastructure enabling citizens and businesses to reduce, reuse and recycle efficiently. Recycling helps numerous industries reduce their energy use, along with greenhouse gas (GHG) emissions. Recycling conserves non-renewable natural resources and raw material supply, creates jobs, contributes to the economy and offers consumers an efficient method to reduce their environmental footprint.

Position: The IMA supports the practical collection, processing and subsequent reuse of recyclable materials. No one-size-fits-all approach works in recycling. Different commodities may require different approaches or solutions when looking at opportunities to initiate and/or increase recycling. Also, different communities may require different approaches to recycling.

The IMA supports initiatives to identify and promote best practices in capturing recyclable materials and in investment in new technology. Policies should recognize and, when appropriate, credit manufacturers for their use of renewable and recyclable materials in the manufacturing process.

Market forces should guide recovery and recycling systems. As with other goods and commodities, the IMA supports international free trade and open markets for recycling activities and materials. Voluntary actions can and should be part of the solution. The IMA supports policies that recognize the value of recyclable materials as economic commodities and that promote investment in recycling infrastructure.

* For more information on Tax Credit for Investment in Recycling Waste Technology see page 22.

Hazardous Waste Generator Improvements Rule

Issue/Status: On November 28, 2016, U.S. EPA's final Hazardous Waste Generator Improvements Rule was published in the Federal Register. The Rule, which became effective at the federal level on May 30, 2017, includes the most substantial changes to the RCRA hazardous waste generator rules since the 1980s. States with authorized RCRA programs are required to adopt the provisions of the new Rule that are more stringent than current regulatory requirements. However, certain aspects of the new Rule are less stringent and provide new areas of flexibility for hazardous waste generators. For example, under the new Rule very small and small quantity generators can in some cases exceed their waste generation threshold for an episodic event and maintain their current generator Issue/Status. The Rule also allows very small quantity generators to consolidate hazardous waste at large quantity generators in certain cases. States, including Indiana, may, but are not required to adopt these less stringent regulations into their authorized programs.

The new Rule also for the first time codified certain “conditions for exemption,” which a generator is required to satisfy or risk being subject to extremely onerous RCRA TSD permitting requirements. Commenters on the Rule expressed great concern that these conditions for exemption represented a major shift in enforcement and could lead to a draconian system whereby generators trigger RCRA TSD permitting requirements based on very minor violations of the generator rules. In response to those comments, in the preamble to the Rule, U.S. EPA noted that “regulatory agencies retain the same discretion and authority regarding bringing various types of enforcement actions that they have always exercised in situations where non-compliance with conditions for exemptions have been detected.” 81 Fed. Reg. 85,732, 85,747.

IMA Position: As IDEM works toward updating its state rules to take into account the Generator Improvements Rule, the IMA supports efforts at the state level the reduce regulatory burdens and allow for increased flexibility. Specifically, IMA encourages IDEM to incorporate those portions of the Generator Improvements Rule that are less stringent than current state regulations.

To address the newly codified “conditions for exemption,” and consistent with U.S. EPA’s statements, IMA encourages IDEM to develop enforcement policies under which minor violations of the hazardous waste generator requirements are not treated as violations of the more onerous RCRA TSD permitting rules.

ENERGY

Issue/Status: According to the U.S. Energy Information Administration, industry is Indiana's largest energy consumer, using between 40-50 percent of all energy.

More than 90 percent of Indiana's electricity generation has historically been fueled by coal, but coal's share is declining. In 2016, only 70 percent was generated by coal, while the share of net generation from natural gas more than doubled from 2014, to nearly 20 percent of generation. Indiana still ranked eighth among the states in coal production and third in coal consumption. The state's industrial sector was third nationwide in coal consumption. Wind provided nearly five percent of Indiana's electricity generation in 2016; and nuclear, biomass, solar, and hydroelectricity supplied most of the rest.

Federal and state laws allow manufacturers to install their own electricity generation, operate that generation, and buy services from their incumbent electric utility for back-up, stand-by, and maintenance power. Currently, there are about 40 separate electricity generating units owned by customers in Indiana that generate approximately 2,300 MW.

For years the relative price average of industrial electricity in Indiana has eroded when compared to the average price in other states. Indiana used to have some of the lowest prices; now the state has a retail price for industrial customers averaging anywhere from 20th to 30th lowest in the nation.

Cost and Reliability

Issue: Hoosier manufacturers need safe, reliable, environmentally-compliant, and adequate energy to maintain our leading role as the most manufacturing intensive state in the country. The problem manufacturers face is a rising cost environment with regards to the cost of electricity.

IMA Position: Supports utility rates that allocate costs and design rates in such a manner that:

- Supports the ability of manufacturers to invest in Indiana;
- Balances the interests of the utility and manufacturers;
- Ensures just and reasonable rates;
- Allows utilities rate flexibility to attract and maintain manufacturing investments in Indiana;
- Supports the continued investment in utility infrastructure to safely and reliably deliver energy to customers;
- Delivers safe, reliable, environmentally-compliant, and adequate service;
- Reflects the reasonable costs the utility incurred providing service to the customer;
- Recognizes that costs should be borne by those who cause them to be incurred; and
- Supports the continued reduction and ultimate elimination of subsidies, wherever possible, especially subsidies of commercial and residential customers by industrial users.

Cogeneration and Self-Generation

Issue/Status: For Hoosier manufacturers to expand industrial output and meet the growing energy needs of automation, increased electricity generation by industrial consumers will be an important part of finding an optimal mix of energy resources.

IMA Position: Supports the expansion of cogeneration and other self-generation opportunities, the development of just and reasonable back-up and maintenance rates, and other approaches which may be unique to specific manufacturers. Any movement to ease the burden for industrial users should be made with a considered approach that equitably shares any potential burdens and recognizes any system benefits of self-generation or cogeneration projects.

Government Regulation and Mandates

Issue/Status: The increasing cost of electricity for manufacturers is largely due to federal environmental regulations and mandates, particularly on coal. Similarly, government mandates for the use of other, more expensive sources of energy, or requirements to pursue energy efficiency activities drive up costs on manufacturers.

IMA Position: Manufacturers use a significant amount of energy in Indiana and government regulation and mandates typical drive up the costs of that energy. Therefore the IMA:

- Supports a focus on the long-term, market-driven energy resources that are free from government mandates and take into account the changing energy mix.
- Supports an "all-of-the-above" approach, including fossil fuels, renewables, and investments in energy efficiency to meet present and future energy needs.
- Supports fuel diversity and risk mitigation to reasonably manage operational and financial risks from fuel supply disruptions and/or price volatility.
- Supports demand-side energy efficiencies that foster innovation and are driven by the needs of consumer manufacturers, not government mandates.

Cost Securitization and Other Economic Plans for Retiring Coal Facilities

Issue/Status: More and more coal facilities are needing to be retired, but they still have unrecovered depreciation costs. Utilities have the right to reasonably recover costs for and a return on the investments they made over a period of time. This last year, the legislature passed a pilot program for cost securitization, one type of economic plan that can be used to recover costs.

IMA Position: IMA supported the cost securitization pilot program. IMA does not support the idea that cost securitization as the only mechanism to retire uneconomical coal plants. IMA supports economic plans that provide benefits to utilities and ratepayers.

Commercial Solar and Wind Development

Issue/Status: A predictable and stable regulatory environment is critical to ensuring the delivery of cost-effective, reliable energy.

IMA Position: Therefore the IMA: Supports state action to ensure a stable investment climate that provides the energy industry with regulatory certainty needed to invest in generation located in Indiana.

Electric Vehicles

Issue/Status: The move towards electrification is gaining popularity as the renewable energy transition is taking place. The Indiana Utility Group was recently awarded $5.5M from the Volkswagen Mitigation Trust Fund to build out 61 DC fast charging stations for electric vehicles and create a statewide plan for the electric vehicle roll out. The legislature and the players involved in the rollout of electric vehicles are continuing to work together to determine the many facets this issue touches from road funding, infrastructure ownership, grid capacity and reliability, etc.

IMA Position: IMA supports a policy that promotes electric vehicles manufacture and use, encourages the development of charging and other infrastructure to support the deployment of electric vehicles and to recognizes that public utilities that provide retail electric utility services, along with other entities, can play an important role in fulfilling this policy. However, we maintain that we are a fuel neutral organization that does not support incentives that lift up one fuel source over another.

INFRASTRUCTURE, TRANSPORTATION, LOGISTICS, VEHICLES

Transportation

Issue/Status: As the leading manufacturing state in America, the ability to transport materials and products is very important to continued vitality of our industry.

Problem: Indiana, like other states, is struggling to find a consistent revenue stream to pay for state and local roads and bridges. Fuel taxes have declined significantly in recent years as more fuel-efficient cars have reduced consumption. Quality roads and bridges are critical to manufacturing success, and investment into maintenance and expansion of the state's infrastructure network is a significant challenge.

IMA Position/Solution: State law and policy should reflect the most advantageous terms necessary to ensure that the leading manufacturing state in America – Indiana – does not find its employers disadvantaged by limited transportation opportunities such as truck restrictions limiting movement of goods and services used or produced here nor penalizing shippers in liability law. Revenue streams collected from road users should be dedicated to road and bridge spending and should be generalized across all users and not disproportionately tax businesses.

OEM/Franchise Dealer Contracting

Issue/Status: All of the domestic auto manufacturers and foreign direct auto manufacturers who do business in the State of Indiana – with the exception of Tesla – are required by state law to offer their products for retail through a franchise auto dealer. This is a long-standing policy. From time-to-time, the General Assembly considers policies that serve to alter this arrangement, and tip the scale in favor of the franchise dealers.

Problem: In the IMA's view, requiring the auto manufacturers to perform new services or make new contractual concessions via new legislation is improper and undue interference with existing agreements.

IMA Position/Solution: Indiana is one of the leading states in the nation for automobile production. In light of the significant investment that each of the domestic auto manufacturers and three foreign direct auto manufacturers have made in the state, the General Assembly should take great care when considering legislation that interferes with franchise dealer agreements and only enact new legislation when the franchise dealers have legitimate claims of business interruption.

HEALTH CARE

ERISA (Employee Retirement Income Security Act of 1974)

Issue/Status: ERISA is the foundational federal legislation protecting employers flexibility for determining health care coverage for their employees. ERISA created national standards for employee benefit plans, including reporting, disclosures, fiduciary responsibilities, claims/appeals and remedies for noncompliance. To minimize the potential patchwork effect of each state enacting their own laws regulating employee benefits, Congress included a broad preemption of state laws that could interfere with the uniform administration of ERISA plans.

One recent survey by AHIP, the national health insurer provider association, shows Indiana as the 3rd highest state by concentration of ERISA plans with 71% of employer sponsored plans being self-funded.

Problem: States are generally unable to regulate ERISA plans. Recent action by the US Supreme Court in *Rutledge v. Pharmaceutical Care Management Association* narrows ERISA preemption and may open the door for increased legislation by states to independently regulate the payments made by intermediaries on behalf of self-insured ERISA-covered group health plans. Following Rutledge, there is the potential for more widespread adoption of similar legislation by states targeting other payment practices, not only by PBMs, but also by other group health plan service providers, like third-party administrators ("TPAs") that manage employer health and behavioral health benefits. Legislation of the sort could have a chilling effect on strategies currently used by employers, TPAs and PBMs to manage benefit costs for self-funded plans.

In 2023, the Indiana General Assembly passed legislation mandating reporting of ERISA claims information to the All-payer Claims Database. This action is contrary to not only the general preemption in ERISA but also to the narrower preemption for data submission and regulatory authority as affirmed by the US Supreme Court in *Gobeille v. Liberty Mutual Ins. Co.*

IMA Position/Solution: The IMA opposes state regulation of ERISA, self-funded plans. ERISA plans should be exempt from state mandates or regulatory requirements. Participation of ERISA plan sponsors in claims databases should be voluntary with efforts made by state government to convince employers of the benefits of providing data. This position does not preclude Indiana from regulating health care provider costs, charges that provide benefits to fully-funded and self-funded plans alike.

Health Care Reform/Affordable Care Act

Issue/Status: The Patient Protection and Affordable Care Act also known as the Affordable Care Act (ACA) or Obamacare is a United States federal statute that was signed into law by President Barack Obama on March 23, 2010. The law is a product of the health care reform agenda of the 111th United States Congress and the Obama administration. The ACA reforms certain aspects of the private health insurance industry and public health insurance programs, including increasing insurance coverage of pre-existing conditions and expanding access to insurance to over 30 million Americans, while mandating an increase in total national medical expenditures.

Problem: The ACA sets in motion promulgation of rules by multiple federal agencies including the Department of Health and Human Services, the Dept of the Treasury, and the IRS. In addition, 26 individual states attorney generals and other parties sued the federal government over all or parts of the ACA's implementation. Various courts have responded to these suits with decisions ranging from legal acceptance of the entire act to reversal of sections of the act to outright declaration of it being declared completely unconstitutional. Congress has repeatedly debated repeal of the ACA and multiple version of a repeal have passed various chambers, though no repeal and/or replace proposals have become law. Furthermore, on the first day of the Trump Administration, an executive order was signed to eliminate or limit the regulatory burden related to the ACA.

In addition to the legal uncertainty of the PPACA continued rapidly rising health care costs are a challenge for manufacturers. Manufacturers want to attract and retain highly skilled, healthy and productive employees and are committed to sponsoring benefit programs that maintain the appropriate balance of quality care, flexible designs and shared financial responsibility but are unable to efficiently plan under these murky circumstances. The rising costs associated with a growing uninsured population and federal and state entitlement programs – all of which manufacturers share – are threatening our industry's competitiveness.

The U.S. devotes a much larger share of GDP to health care than other industrialized nations and thus hurts our competitiveness. Basic quality indicators show that the U.S. does not have the best health outcomes and the medical system is inefficient.. Process inefficiency adds costs to any business – including health care. Administrative and medical process inefficiencies lead to duplication of basic patient services and tests, preventable medical errors, lost productivity, and decreased patient satisfaction. America's inefficient medical liability system encourages frivolous lawsuits, unnecessarily increased costs through the use of defensive medicine, higher administrative costs, and less access to quality care as physicians relocate or retire.

IMA Position/Solution: The IMA supports reform measures that enhance performance incentives for innovation in the health care sector. Federal and state government should promote competition based on quality and value.

1. Strong liability and tort reforms covering both medical services and medical products are needed. These reforms should include uniform standards for medical liability claims, limits on non-economic damages in jury awards, periodic payments for large damage awards, limits on attorney's fees, mandatory offsets for collateral sources of recovery and stricter statutes of limitations.

2. The entire expense of health insurance coverage or plans should be tax deductible for businesses regardless of corporate/business organizational structure. PPACA taxes on medical manufacturers, employers, and insurance carriers should not be implemented.

3. The Worker's Compensation system should maintain its independent Issue/Status and continue to be regulated only at the state level.

4. Employers and employees should be free to choose the plan that best meets their needs. Should employers, either through contract or voluntarily with their employees, agree to provide a corporate plan, they should be free to do so. Competitive provider networks and insurance plans should be promoted to maintain a progressive, evolving marketplace. There should be no assignment of benefits legislation or new employer mandates. The state should take no action to change the ERISA preemption of state law and should encourage employers to provide ERISA approved self-funded health care plans for manufacturers of all sizes.

5. The IMA opposes Medicaid and Medicare reimbursement reductions to health care providers in instances where it causes cost shifting, which in turn raises private payers' costs or reduces the availability of quality health care. Both the state and federal government have responded to growing costs by reducing reimbursements to providers and cost shifting to the private sector – actions that exacerbate affordability and access in the private market and are forcing many employers to reduce or cease offering health benefits. Cost shifting is a significant hidden tax on all privately insured Americans.

6. The IMA supports legislation to promote broader consumer and employer access to provider health care performance and pricing data. Providers should continuously improve the value of care delivered by using outcome research, practice guidelines and by making data available to assist purchasing decisions. Efforts should be made to reduce administrative costs both for private medical plans and government programs through such means as greater use of electronic interchange of information. Improvements in access to health care and provider performance and pricing data. The IMA approves of the standardization of health care provider data to provide employers and consumers with reliable cost and quality information upon which health plan and provider selection decisions can be made. Information related to quality and cost should be readily available in a user-friendly format for all health care stakeholders – employers, government, insurers, consumers and providers.

7. The IMA opposes legislative efforts that could weaken or destroy health care networks that negotiate on behalf of employers, individuals and other private payers with medical providers to provide health care at reasonable rates.

8. The IMA believes health care reform should preserve the public/private partnership in delivering medical coverage to American citizens. The federal or state government should not be the sole provider of health care.

9. The IMA opposes federal and states taxes on health care spending that raise costs or limit the ability of companies to provide benefits to employees. (See page 10).

10. The IMA opposes any legislation that includes a mandate for insurance coverage or payment amount from which the state exempts the state employee health plan and/or the state's Medicaid plan. Mandates where the state can opt itself out due to cost concerns are inherently too expensive for employers. This position aligns with the IMA's broader stance against new employer mandates and its support for employers being free to choose plans that meet their needs, as well as its opposition to cost shifting.

Hospital Prices

Issue/Status: In 2009, automotive manufacturers surveyed 13 markets where the auto industry had a significant presence to measure the relative cost of health care. Kokomo and Indianapolis Indiana were the most expensive markets in the study. In September 2017, the RAND Corporation released the first study of hospital price comparison. The study measured prices as they related to the federal government (Center for Medicare Studies (CMS)) reimbursement amount for the same service under the Medicare program. That study showed a national average for hospital prices of 200% above Medicare. Indiana's average prices were 272% above Medicare. Indiana was high for both in-patient and out-patient services, but especially on out-patient services.

The 2017 RAND report was expanded to compare Indiana's hospital prices to other states. Released in May 2019, RAND 2.0 surveyed 25 states and Indiana's hospital prices were on average 311% above Medicare while the average of the 25 states was 241% above Medicare. RAND 3.0, released in September 2020, focused on claims data over the 2016 to 2018 period from 3,112 hospitals and 49 states – accounting for $33.8 billion in spending by private payers. The results of this version showed Indiana to have the sixth highest average hospital prices in the county, the fifth highest facility prices and the fourth lowest professional fee prices. RAND 4.0, released in May 2022, continued the in-depth analysis of Indiana's hospital prices. This version expanded its scope to $78.8 billion in private pay spending, 4,102 hospitals in 49 states. Indiana ranks 7th highest for inpatient and outpatient relative price, 4th highest for total facility price, 4th highest for inpatient facility price, 6th highest for outpatient facility price, and 4th lowest for professional fees.

Problem: Employers have experienced increasing health insurance costs for many years. This cuts into profits, wages and other benefit increases. Increasingly, these high costs are resulting in the adoption of high deductible plans, shifting some costs to employees. Also, high prices by health care providers result in more out of network charges and more "balanced or surprise billing" where individuals receive unexpected charges.

The relatively high prices, when compared to other states, also creates a competitive disadvantage against Indiana businesses and against the State for purposes of business attraction. While many companies can cut costs through benefit cuts, this is not true for many manufacturing companies that have benefits levels set on a national or global basis, either as company policy or as part of a bargaining agreement. In either scenario the Indiana business is at a disadvantage. A company that cuts benefits is at a disadvantage for worker attraction because competitors in other states can offer more take home pay or better insurance rates and benefits. From a state business attraction perspective, an increase in the cost of doing business reduces the attractiveness for new and continued business investment. This is true for existing companies that are bearing higher hospital prices and thus less attractive for investment within their corporate structure, and potential new-to-Indiana companies looking for places to locate manufacturing operations.

IMA Position/Solution: In the manufacturing sector, competition is the best tool to drive down costs and increase quality and supply. Market forces only work when consumers can make informed choices. This is difficult in the health care market in general and for Indiana hospitals specifically. Because of the immediate need for some medical services, consumers are not able to choose cheaper options. Furthermore, consolidation of hospitals into large groups and the purchase by these groups of specialist and other doctor practices has limited competition. Finally, for more rural areas, options for hospital care may not be a practical choice if they are located far from where employees live.

Even where options exist, the existing system of hospital costs, charges and prices are so complex that the average business, much less the average individual, only manages to act as an educated consumer with difficulty.

Therefore, the IMA supports action in the following categories to directly reduce costs, act as informed consumers and allow businesses and their agents to fairly negotiate lower costs.

1. **Directly Control Costs.** It is important that the State act to immediately reduce prices. For fully insured plans, over which states have jurisdiction, hospital reimbursement should be capped at a percentage of Medicare reimbursement to the hospital with the ability of payers and hospitals to negotiate prices within set bands above and below the cap, with prices only being charged above a Medicare reference price when explicitly approved by the payer. The State should also act to control prices for self-insured plans seeking to regulate the contracts between providers and payers.
2. **Ensure Price and Reimbursement Transparency**. The IMA supports "broader consumer and employer access to provider health care performance and pricing data" (see above). The following specific policies are consistent with that goal.
    a. Require all prices to be disclosed as a reference to Medicare reimbursement.
    b. All prices must be available upon request.
    c. All hospital bills must be itemized.
    d. Eliminate "underbilling" or "dishonest billing" where charges are billed under a hospital's reimbursement, regardless of where the procedure took place, thus raising the prices for payers. This issue is also called "site-of-service" reform.

(The legislature prohibited hospital facility fees from being assessed for certain procedures that are performed outside of a hospital setting, but only for the largest hospital networks. This prohibition should be extended to all hospitals in Indiana.)

e. Prohibit gag clauses between payers and hospitals in reimbursement contracts to allow health consumers the ability to view the prices paid by others.
f. Create an All-Payer Claims Database

3. **Balance Negotiation Between Hospitals and Payers.** Anti-competitive clauses included in contracts between hospitals and payers should be prohibited. Specifically, state law should prohibit language that groups all hospitals within a hospital system together, such as anti-tiering language and "all or nothing" language that requires all-hospitals within a larger system to be included in an insurance network. Payers, when negotiating with hospitals must be able to set different reimbursement rates for different facilities based on the needs of their employees and budgets. Furthermore, the state statute requiring insurers to include in networks "any willing provider" should be repealed as it limits the ability of payers to set up network prices that meet the needs of consumer.

The IMA supports efforts to limit excess reserves of not-for-profit hospitals. Not-for-profit entities should be able to charge prices that cover costs, maintain adequate cash reserves and plan for future growth. Current levels of cash reserves held by Indiana hospitals do not meet that definition under any reasonable application. Excess reserves should be reduced, and the benefit returned to the health care consumers who paid the prices necessary to accrue those reserves.

The IMA supports efforts to eliminate surprise or balanced billing where health care consumers are sent bills at out of network rates, which they did not expect. In 2020, Indiana passed legislation capping charges for out of network patients at no-more-than the average network rate. Thirty-Three states, including Indiana, have adopted laws or rules protecting patients from balanced or surprise bills but these vary widely in their scope and effectiveness. Indiana's 2020 legislation allows balanced billing for ambulance services and when a patient consents to the additional charges. Michigan, Ohio and Illinois have passed comprehensive bills, but those only apply to fully insured plans due to preemption by ERISA. Congress enacted the No Surprises Act in 2020 to protect most people who are not currently protected under this patchwork of state laws. This federal law went into effect on January 1, 2022.

The IMA supports expanded options for lower cost delivery of health care. Federal programs that incentivize lower cost health centers and clinics should be expanded and the State should explore ways to support or supplement these efforts. Additional options for high quality primary care service are especially important to employers and patients in rural areas. There the impacts of markets with little competition are particularly felt, and employers have few choices other that higher costs or worse care for their employees.

OTHER ISSUES NOT DIRECTLY COVERED BY SPECIFIC POLICIES

From time to time, IMA staff members are faced with legislative decisions regarding matters that do not fall squarely within specific policy areas. Frequently when that happens, it is with virtually no time for membership deliberation. When that happens, IMA staff will make the best determination possible in light of their understanding of the interests of the manufacturing community and take an appropriate position, if necessary.