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 September 22-23, 2022
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ADVANCED CORPORATE COUNSEL

September 22-23, 2022

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Agenda

September 22, 2022

- 1:30 P.M. Program Registration and Refreshments**
– outside of EB Rhodes Room, lower level of WB
- 2:00 P.M. Welcome! Program Begins
– *Adam J. Richter*, Program Chair
- Session 1: Construction Law for the Non-Construction Corporate Counsel
– *Matthew B. Millis*, Discussion Leader
- 3:30 P.M. Refreshment Break**
- 3:45 P.M. Session 2: A Recap of the 2022 Legislative Session for Corporate Counsel and Looking Ahead to 2023
– *Malika Butler*, Discussion Leader
- 5:15 P.M. Adjourn Day One / Hosted Reception**

September 23, 2022

- 8:00 A.M. Continental Breakfast Items and Coffee Available**
- 8:30 A.M. Session 3: On Mission: Your Journey to Authentic Leadership
– *Sean M. Georges*, Discussion Leader
- 10:00 A.M. Coffee Break**
- 10:15 A.M. Session 4: Internal Investigations and Crisis Management
– *Drew J. Miroff*, Discussion Leaders
- 11:45 A.M. Adjourn**

September 22-23, 2022

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September 22-23, 2022

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Adam J. Richter, VP, General Counsel Gene B. Glick Co., Inc., Indianapolis



Adam Richter leads the company's legal and risk management departments, where he oversees the management of transactional and litigious legal matters and develops programs designed to keep Glick's residents, employees and properties safe. He is passionate about the opportunities this role presents, especially the diversity of issues that change daily and require critical thinking skills.

Adam is pleased to be a member of the Glick team for many reasons, but the Founders' legacy of philanthropy and ethical standards top the list. He is most proud of Glick's risk management advancements and the growth of the Gene B. Glick Family Housing Foundation.

Adam joined Glick after several years of large-firm private practice where he routinely represented high profile real estate developers, investors and institutional clients in a wide range of commercial real estate related issues. Prior to becoming an attorney, Adam developed his own successful portfolio of investment properties and he continues to be an active real estate investor. Adam received his Bachelor of Science degree in business from Indiana University Kelley School of Business and his JD from Indiana University School of Law-Bloomington, both with honors.

In addition to his corporate duties, Adam is a member of the Indianapolis Chamber of Commerce- Accelerate Indy Leadership Committee, a Board Member and former Chairman of Indianapolis Cultural Trail, Inc., the former Board Chairman of Morning Light, Inc. (f/k/a the Visiting Nurse Service Foundation, Inc.), an active member of the Indiana Affordable Housing Council, and a mentor for and member of the Urban Land Institute (Indiana Chapter). He is also a graduate of the United Way of Central Indiana Leadership United Generation Now Series. When not tending to his professional duties, Adam enjoys spending time outdoors with his wife, Jennifer, and their two young boys.

Malika Butler, Taft Stettinius & Hollister LLP, Indianapolis



As director of public affairs, *Malika Butler* represents clients in a wide range of policy matters before state legislative and executive agencies. She is regularly called upon to advocate the interest of clients on government contracts, grant and incentive programs, and legislative and regulatory matters.

Prior to joining Taft, Malika served as assistant vice president of governmental affairs with the Indiana Manufacturers Association (IMA). In this role, she served on the leadership team of the IMA and assisted in association management, government relations, and political engagement. During her tenure at the IMA, Malika focused on issues relating to talent development, workforce training and education, economic development, and environmental regulation to advance the interests of the industrials sector.

Further, she served as the manager of political affairs for the Indy Chamber, where she led its political action committee's fundraising efforts and lobbied on issues impacting central Indiana's business community before the Indiana General Assembly and the Indianapolis City-County Council. Malika's past experience also includes service as a legislative assistant in the Republican caucus of the Indiana House of Representatives, where she provided policy assistance to three state representatives.

Malika earned her bachelor's degree in political science at Indiana University Bloomington and she is pursuing her Master of Business Administration at the Krannert School of Management at Purdue University.

Malika's community involvement includes service on the board of directors for the Purdue Manufacturing Education Partnership (MEP), Indiana Correctional Industries, and Governmental Affairs Society of Indiana (GASI). Malika was selected for the Indiana Leadership Forum (Class of 2018) and the Richard G. Lugar Excellence in Public Service Series.

Sean M. Georges, On Mission Leadership, LLC, Chandler



Sean Georges accepted a Commission in the Marines. He later became a Marine Corps Judge Advocate, serving on active duty for 13 years. Sean obtained his law degree from the University of Illinois, and later earned an advanced law degree (LL.M.) from The Judge Advocate General's School of the Army. For the past 20 years, he has served as Senior Vice President of Human Resources and corporate counsel for a leading, publicly-traded retailer.

Sean has served on a variety of community boards, and summarized his perspective on leadership in a recent TEDx presentation, *The Essence of Authentic Leadership*. Sean humbly seeks to serve those who wish to carry their personal and professional leadership responsibilities.

- LL.M., Military Law, The Judge Advocate General's School
- J.D., University of Illinois College of Law
- B.S., United States Naval Academy
- Former Major, USMC
- 20+ Years: Corporate Counsel & SVP, Human Resources for a leading publicly-traded, national retailer

Matthew B. Millis, Easter & Cavosie, Carmel



Matt Millis is a construction lawyer who helps developers, contractors and design professionals navigate the complexities of the construction process. He provides day-to-day counsel from project inception to completion and guides his clients through dispute resolution when problems arise on the job.

Matt is also a seasoned commercial litigator with both trial and arbitration experience. When construction or other business disputes arise, Matt helps his clients develop the right resolution strategy, whether that may be measured negotiation, or aggressive litigation. Matt has handled both bench and jury trials and resolved many cases through mediation or arbitration.

Prior to joining Easter & Cavosie in 2020, Matt honed his construction law skills as an associate at Fredrickson & Byron, a large regional firm in Minneapolis, and as a partner and head of the construction law group at Wooden McLaughlin, a mid-size firm in downtown Indianapolis.

Drew J. Miroff, Ice Miller LLP, Indianapolis



Drew Miroff is a partner in the Business Litigation Group. He concentrates his practice in complex litigation focusing on the supply chain, products, business, and land use litigation. Drew is frequently described as an aggressive, yet practical litigator who gets to the heart of the issues in an effort to find quick, efficient, and favorable solutions to his client's business disputes. In this part of his litigation practice, Drew represents businesses in virtually all aspects of their litigation including supply chain disputes (UCC disputes, service disputes, termination of supplier contracts, supplier stop ship treats, distributor agreements, etc.), business torts and contract disputes (including unfair competition, non-compete/non-solicitation enforcement, proprietary information protection, business separations, etc.), real estate matters (contractual, zoning and condemnation actions) as well as product, premises, and asbestos-related liability claims.

For many years Drew also worked with both the underground and surface mining industry with respect to citations and orders issued by the Mine Safety Health Administration.

While looking for out-of-court solutions where possible, Drew and his team have successfully tried cases in traditional Court settings as well as less-traditional arbitration settings. Drew is also frequently in state and federal courts seeking and defending against temporary restraining orders and preliminary injunctions, and other forms of emergency relief.

In addition to his litigation practice, Drew's calm, thoughtful, no-nonsense style and broad risk management experience frequently leads to his involvement as part of the client's strategic team. In this role, Drew works with clients to identify areas of risk and then develop and implement mitigation and litigation avoidance strategies. In addition, Drew routinely helps guide clients through catastrophic incidents and crisis situations, including conducting and directing external and internal investigations.

Drew's litigation and risk management experience spans a wide array of industries including agriculture, manufacturing, heavy-duty industrial and commercial equipment and components manufacturers, apartment management, construction, energy, mining, commercial real estate, and a multitude of general service providers.

Drew is from Indianapolis, Indiana. He received his Bachelor of Arts in psychology from the University of Michigan in 1996, with high honors. In 1999, he earned his juris doctor, *cum laude*, from Northwestern University School of Law in Chicago, Illinois. While attending law school, he was a member of the National Moot Court Team, the co-

chairperson for the Julius Miner Moot Court Competition and served on the SBA Admissions Committee.

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2022 Indiana General Assembly

Legislative Report..... Malika Butler

PowerPoint Presentation

Section Three

Authentic Leadership

What Leadership IS.

Why YOU Need to Lead..... Sean M. Georges

PowerPoint Presentation

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Section One

Construction Law for the Non-Construction In-House Counsel

Matthew B. Millis
Easter & Cavosie
Carmel, Indiana

Section One

Construction Law for the Non-Construction In-House Counsel..... Matthew B. Millis

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Construction Law for the Non-Construction In-House Counsel

[E]xcept in the middle of a battlefield, nowhere must men coordinate the movement of other men and all materials in the midst of such chaos and with such limited certainty of present facts and future occurrences as in a huge construction project such as the building of this \$100 million hospital.

Blake Construction Co. v. C.J. Coakley Co., Inc., 431 A.2d 569, 575 (D.C. App. 1981)

PROJECT DELIVERY SYSTEMS

Introduction

1. What is a project delivery system?

The arrangement of contractual relationships establishing design and construction responsibility for a given project.

2. Key Legal Concept: Privity of Contract, “the connection or relationship that exists between two or more contracting parties.”
3. Three Main Considerations
 - Financial or “cost-risk” framework: How will the project be priced?
 - Relationship framework: Who hires who for what scope?
 - Agreement framework: How will we document the contractual relationships?

Cost-Risk Framework – Pricing Methodology

1. **Lump Sum:** Contractor agrees to complete the project for a predetermined, set price. Best used for projects with clearly defined scope of work and schedule
 - Sometimes called “Stipulated sum,” “Fixed Price,” or “Hard Dollar Price”
 - Contractor submits a total project price instead of bidding on each individual item

- Payment is tied to the percentage of work completed. Schedule of values breaks down the lump sum into component parts. Contractor's actual costs are irrelevant.

- Pros

- Certainty of Pricing – all price risk shifted to Contractor
- Simplicity
- Financing is easier
- Paperwork is straightforward
- Cash flow is easier to manage

- Cons

- Frequently more expensive
- Requires significant up-front planning
- Design must well-established
- No insight into how much contractor is marking up costs
- Any change in design will result in change order

2. Cost-Plus Contract: Owner pays the Contractor's actual costs plus a mark-up or "Fee" for Contractor's overhead and profit. Best used for projects where the scope of work is uncertain at the time of contracting.

- Define "reimbursable" costs (sometimes referred to as the "Cost of the Work")

- Define any "fixed" costs (general conditions, insurance, technology, design professionals)

- Define type of "Fee" (flat fee or percentage markup)

- "Control Estimate" – Contractor's estimate used to gauge whether Project is on or over budget.

- Change Orders typically focus on time and scope, since Owner agrees to pay Contractor's actual costs.

- Pros

- Can result in a less expensive project than a lump sum contract, because Contractor does not have to charge a higher price to cover price risk or other contingencies.
- Contractor's profit is fixed
- No incentive for Contractor to cut corners (profit not at risk)
- Less fighting over change orders
- For fast-track projects, cost-plus pricing allows the Contractor to begin work earlier while the design of the project is completed.

- Cons

- All price risk shifted to the Owner
- May be harder to stay on budget
- Financing can be difficult
- More complex and more paperwork
- More oversight required from Owner to ensure proper cost controls in place

3. Guaranteed Maximum Price: Hybrid of Lump Sum and Cost-Plus pricing methods. Contractor paid for its actual costs, plus a Fee, all subject to a price ceiling or “GMP.”

- Contractor is responsible for cost overruns in excess of the GMP
- When can the GMP be increased?
- Is there a “Contingency”?
- Are there “Shared Savings”?
- Changes will increase or decrease the GMP.
- Pros
 - A cap on price with transparency into pricing
 - Contractor’s profit is fixed
 - Conducive to fast-track projects
 - Ease of financing
 - Encourages Contractor to implement good cost controls
- Cons
 - Most complex of all pricing structures
 - Lots of paperwork
 - More oversight required from Owner to ensure proper cost controls in place

4. Unit Price: Based on anticipated quantities and unit prices. Final price depends upon actual quantities required to carry out the work. Rarely used for an entire major construction project.

- E.g., Painting, concrete, roofing, or other trades done on square foot or unit price
- Used for INDOT projects or utility projects
- Low risk / low reward

5. Time and Material – “T & M”

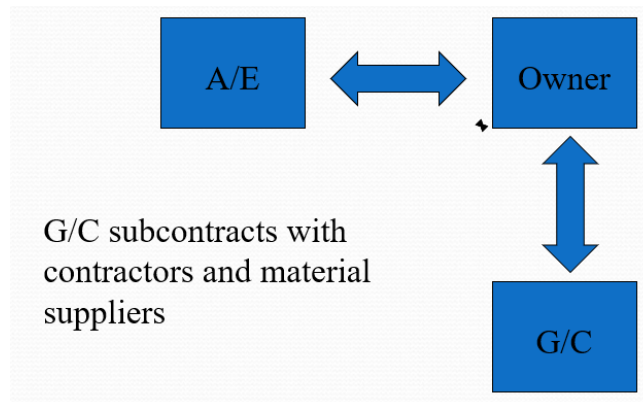
- “Time” = Labor
- “Materials” = Materials and Equipment
- Usually agree upon labor rates that may or may not include all of Contractor’s labor burden
- Contractor’s overhead and profit may be built into agree-upon rates or added as a mark-up
- Will almost always be the most expensive for the Owner.
- Frequently used for change orders

Relationship Framework

Common Project Delivery Options:

1. Design-Bid-Build
2. Construction Manager at Risk
3. Construction Manager as Advisor
4. Design-Build

1. **Design-Bid-Build:** Traditional project delivery method that typically involves three linear phases: design, procurement, and construction, and is best suited for less complex projects. The design and construction contracts are independent, and the contractor is selected based on lowest cost once the design is complete.



➤ **Benefits:**

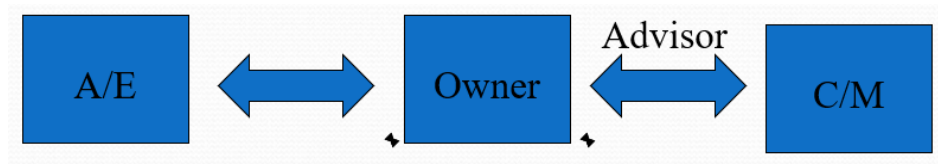
- Simple methodology; traditional means to an end.
- Puts the Owner in control
- Each party has its own contract
- Owner able to choose the lowest price through competitive bidding
- Ease of financing.
- Contractor owns risk of price overruns.

➤ **Drawbacks:**

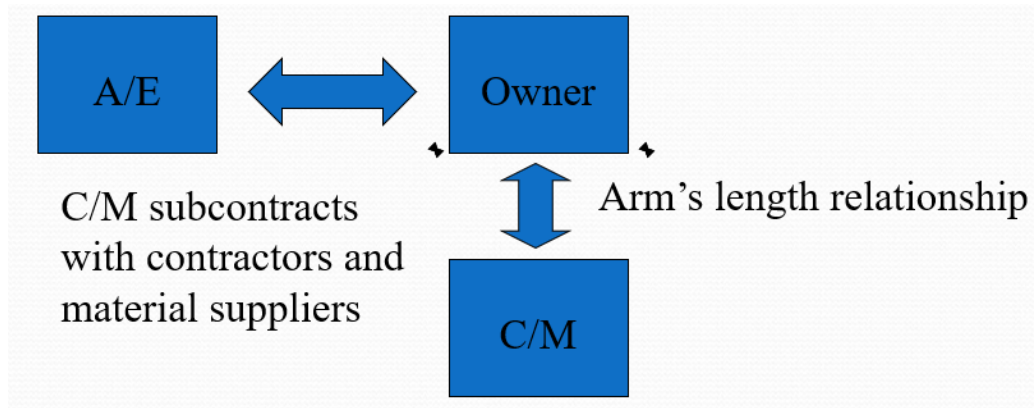
- Owner has significant responsibility for success or failure of the end product, since the project's features are fully determined and specified before selection of the contractor (Owner "owns" the details of design).
- Absence of contractor input during design may limit effectiveness and constructability of the design. Important design decisions affecting types of materials specified and means and methods of construction may be made without appropriate consideration from a construction perspective.
- May not get the highest quality contractor if based on price alone.
- Process may have longer duration since all design work must be completed before price established, and construction may not begin until design and procurement phases are complete.
- If bids are out of budget, process has to restart.
- Owner may see more change orders and claims over design, since Owner accepts liability for design in its contract with the contractor.
- May promote adversarial relationships rather than cooperation and coordination among the contractor, designer and owner.

2. **Construction Manager at Risk:** More collaborative approach in which the Owner hires a CM to act as a consultant during the preconstruction and design of the Project. The CM then acts as the general contractor during the construction of the Project. By engaging the CM early in the process, the Owner gains insight and advice on budget, cost estimating, scheduling and design. This typically allows construction to start sooner leading to a shorter project timeline.

Preconstruction Phase:

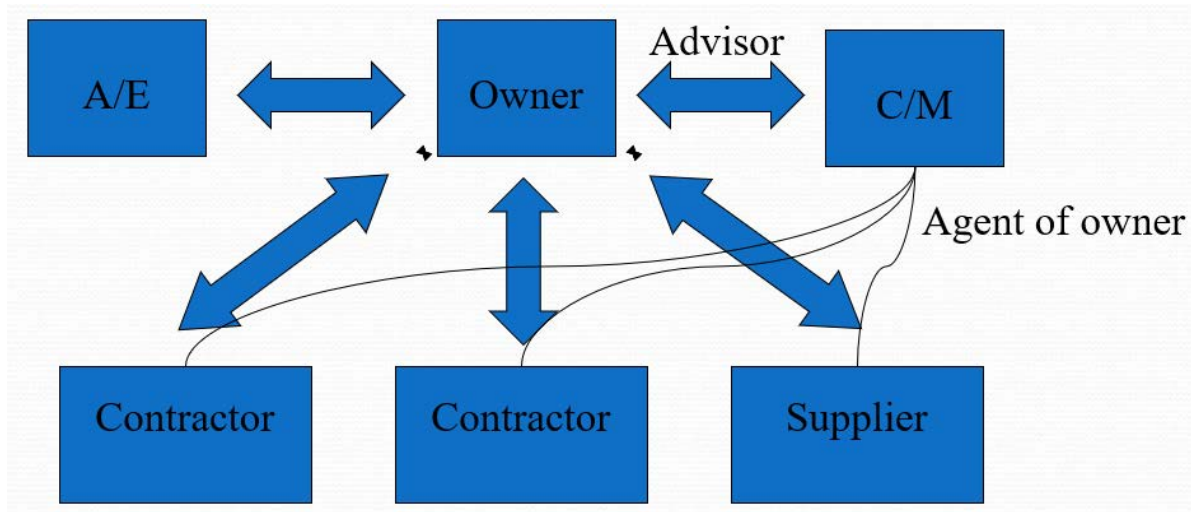


Construction Phase:



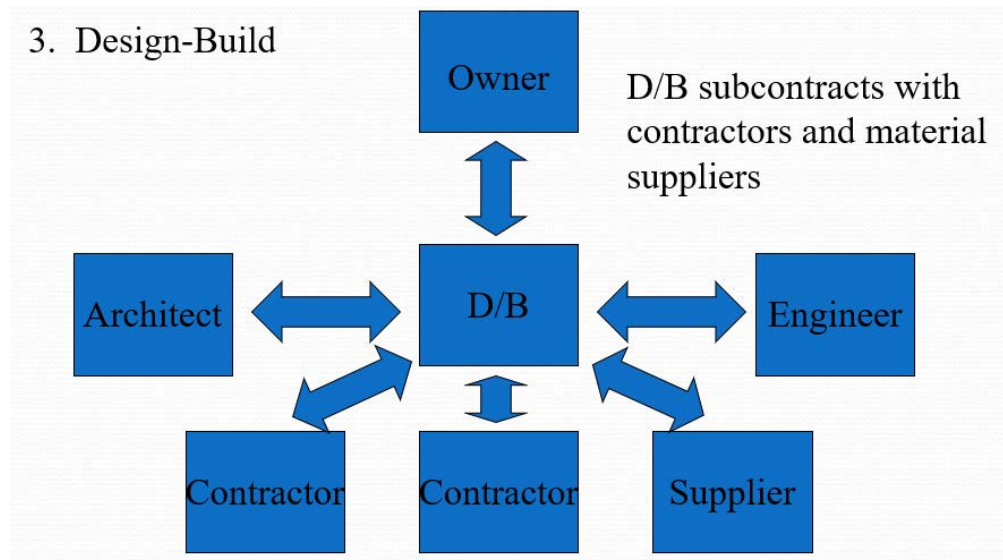
- Benefits:
 - Encourages cooperation between designer and constructor
 - Owner gains the benefit of incorporating contractor's perspective into planning and design decisions.
 - Owner typically gains an earlier understanding of costs, which can allow the project to move more quickly from design to construction.
 - Owner chooses CM based on price and qualification
- Drawbacks:
 - Encourages cooperation between designer and constructor
 - Adding a CM during preconstruction phase creates an added cost for the Owner that may not be appropriate for every project.
 - Lack of contractual relationship between design and contractor puts the Owner in the middle for resolution of project issues, including disagreements over construction quality, completeness of design, and impacts to schedule and budget.
 - Owner still warrants the sufficiency of the plans and specs; changes in design during construction lead to change orders.

3. **Construction Manager as Agent:** Similar to Construction Manager at Risk except that the C/M remains a consultant through construction, and the Owner contracts directly with a separate general contractor or even directly with the trade contractors. C/M oversees the work, but is generally relieved of responsibility for schedule, budget or design defects. Frequently used in school projects.



- Benefits:
 - Encourages cooperation between designer and constructor
 - Owner gains the benefit of incorporating contractor's perspective into planning and design decisions.
 - Owner typically gains an earlier understanding of costs, which can allow the project to move more quickly from design to construction.
 - Owner has impartial advocate throughout design and construction.
- Drawbacks:
 - C/M does not have as much skin in the game, since they are not contractually responsible for construction or design.
 - C/M oversees the project, but does not have contractual responsibility or control over subcontractors.
 - Owner carries design and construction risk.
 - Added cost.
 - Owner must manage multiple contracts.

4. **Design-Build:** Collaborative project delivery method that combines architectural and engineering design services with construction as one team under one contract. Owner provides a “program” to define its performance or other requirements for the project. Design-builder is responsible for designing and constructing the project to meet the Owner’s requirements. This method allows for flexibility in overlapping phases of the project for a reduced schedule and greater overall value.



- **Benefits:**
- Single source of responsibility typically leads to fewer changes, fewer claims and less litigation.
 - Requires least time commitment from the Owner.
 - Risk transfers from the Owner to the Design-Builder
 - Change orders are limited to owner changes
 - Design-builder can typically deliver a project more quickly than design-bid-build or construction management.
- **Drawbacks:**
- Requires Owner to establish a clear program to ensure design of final project that meets Owner’s needs.
 - Most expensive option because Design-Builder taking all design and construction risk.
 - Design team working for Contractor may have difficulty acting as an advocate for the Owner in opposition to the Contractor; upsets the typical system of checks and balances that ensures a quality end product.

Agreement Framework – What contract to use?

Standardized Forms

1. **AIA** – American Institute of Architects
2. **AGC “Consensus Docs”** – Associated General Contractors
3. **EJCDC** – Engineer’s Joint Contract Documents Committee
4. **DBIA** – Design-Build Institute of America (Owners)

Important to understand what group is responsible for the form. While each proclaims to be fair and balanced in terms of its approach, each of the forms tends to lean in favor of the drafting party. For instance, the AIA forms, prepared by the American Institute of Architects tend to heavily involve the architect throughout the construction process and are generally thought of as more pro-architect than other forms. Similarly, the Consensus Docs forms prepared by the Associated General Contractors, tend to be more pro-contractor.

- Advantages:
 - Because the documents are widely used, contract terms are generally well understood by the parties.
 - Forms are generally thorough and cover all important issues that are likely to arise.
 - Numerous forms available to fit each of the project delivery methods.
 - Can implement as a “suite” of forms that work together without conflict.
 - Body of case law has developed addressing specific contract terms and clauses, so when issues arise, parties can look to prior to decisions to see how certain key provisions have been interpreted.
 - Low cost.
- Disadvantages:
 - Frequently require heavy editing to fit specific circumstances of the project.
 - Because the forms have been developed by trade groups, contract terms can favor the membership of that trade organization.
 - Licenses required for use.
 - Some require special software which can be burdensome and difficult to work with.
 - Parties can “see” deviations that may favor one side or the other, which may not allow the party with greater bargaining power to use that power.

Customized / Proprietary Forms

- Advantages:
 - Can be tailored to fit specific project or client needs.
 - May be more difficult for the other party to “see” where you have deviated from industry standards
 - No licenses or proprietary software required
- Disadvantages:
 - More expensive to prepare.
 - May be more expensive to negotiate
 - Lack of body of case law interpreting provisions.

SEVEN CONTRACTING PITFALLS TO AVOID

1. Failing to define the scope of work / performance duties

- Incorporate by reference the most up-to-date design documents and specifications.
- Define the "Contract Documents"
- For design contracts, identify the deliverables that you expect from the architect or engineer.
- For design-build contracts, incorporate by reference a detailed Owner's program outlining the performance and other criteria.

2. No remedy for late performance

- Attach a schedule or clearly define the project duration / completion date
- Do not agree to a waiver of consequential damages without a liquidated damages provision.

3. Excusable / Compensable Delays

- Specifically negotiate the issue of excusable and compensable delays
- Try to limit the causes of delays that are compensable
- Try to limit the types of costs that are compensable
- No-damages-for-delay

4. Price Escalation

- Read the fine print carefully; especially any exhibits prepared by the contractor
- Minimize contractor's use of allowances
- Discuss the issue of price escalation before contract execution
- Specifically negotiate a price escalation provision that is fair and reasonable given the current environment, but that does not put all of the risk on one party or the other.

5. Limitations of Liability

- Carefully review any proposal or contract prepared by a design professional
- Attempt to strike any limitations on the design professional's liability
- Do not waive or limit damages that would be covered by insurance

6. Defining Substantial Completion / Punch List Process

- Define the conditions that must be met for project to achieve substantial completion.
- Will a temporary certificate of occupancy suffice? Are there unique considerations?
- How will punch list process work? Who prepares? Who signs off?
- Release of retainage and ability to hold back for incomplete work.

7. Limiting warranty

- Ensure that there is a blanket warranty of workmanship without temporal limitations.
- Clearly define when warranty periods start
- Separately establish call-back period with temporal limitation.

INDIANA MECHANIC'S LIEN CHEAT SHEET

- **Timing:**
 - **Residential Projects:** Must be recorded within 60 days of last date of work
 - **Commercial Projects:** Must be recorded within 90 days of last date of work
 - **Foreclosure:** Must file suit to foreclose lien within one year of recording of lien

- **Contents of Lien:**
 - **Required Contents:**
 - Amount of claim
 - Name and address of claimant
 - Owner's name
 - Owner's latest address
 - Legal description of the property
 - Common address of the property
 - **Owner's name and address:** must be the latest known name and address as shown in the property tax records.
 - Note that the owner of the property may not be the customer
 - Lien must name the actual property owner
 - Property tax records can be found online for most counties in Indiana
 - **Legal description:** should be pulled from a deed or other recorded instrument.
 - Many Indiana counties provide online access to recorded instruments through Doxpop (<https://www.doxpop.com/prod/in/recorder/>)
 - Title companies can also aid in securing a legal description

- **Pre-Lien Notice:**
 - **When Required?**
 - Only required for work provided:
 - on a single family or double family residential property;
 - that is owner-occupied; and
 - where the subcontractor does not have a direct contract with the owner-occupier.
 - Essentially, if you are a subcontractor on a residential project, a prelien notice is required.
 - NOT REQUIRED ON COMMERCIAL OR CONDOMINIUM PROJECTS
 - **Contents:**
 - No specific form, but it must give notice to the owner of the prospective lienholder's right to hold a lien
 - **Timing:**
 - Must be furnished to the owner not later than 30 days after the first date of work or delivery of materials.

Section Two

2022 Indiana General Assembly Legislative Report

Malika Butler
Director of Public Affairs
Taft Stettinius & Hollister LLP
Indianapolis, Indiana

Section Two

2022 Indiana General Assembly

Legislative Report..... Malika Butler

PowerPoint Presentation

2022 Indiana General Assembly Legislative Report

September 22, 2022

Taft/

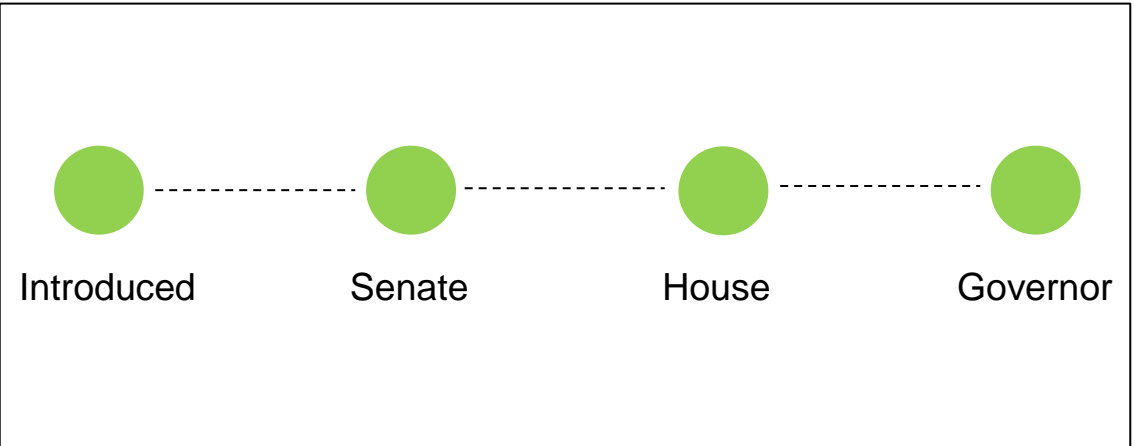
2022 IGA By the Numbers:

- Bills Introduced : **858**
 - Bills Passed: **177**
- Bills Signed by Governor: **175**
- Bills vetoed by Governor: **2**
 - Veto Overrides: **1**

Career and Technical Education

Number: HB 1094

Sponsor: Teshka, J



Description:

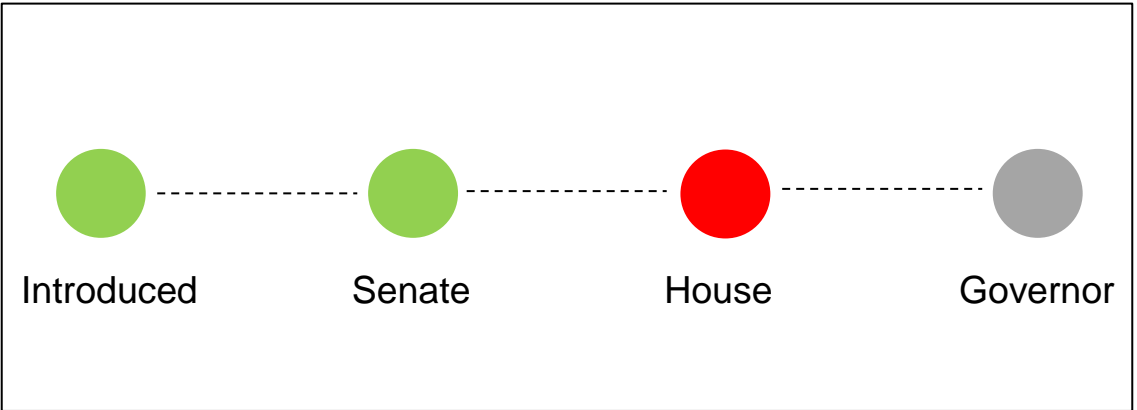
Requires the Department of Education to provide adequate employer liability and workers' compensation insurance coverage for high school students enrolled in a work-based learning course. It also defines a "youth apprenticeship" program for the purposes of state career-technical education funding.

Status: Signed by Governor.

Local Workforce Recruiting and Retention

Number: SB 4

Sponsor: Holdman, T



Description: SB 4 establishes a workforce retention and recruitment program within local communities.

The bill allows local units of government to create a fund to help attract and retain employees for continued business in their community. Funds could support financial resources such as grants and loans for Indiana college graduates and individuals who live in or relocate to the community for work, to agree to work remotely or agree to work for an Indiana company.

Status: The bill died in the House after failing to receive a hearing in the House Local Ways and Means Committee. However, SB 4 found a home in SEA 361 that was signed into law on March 15, 2022.

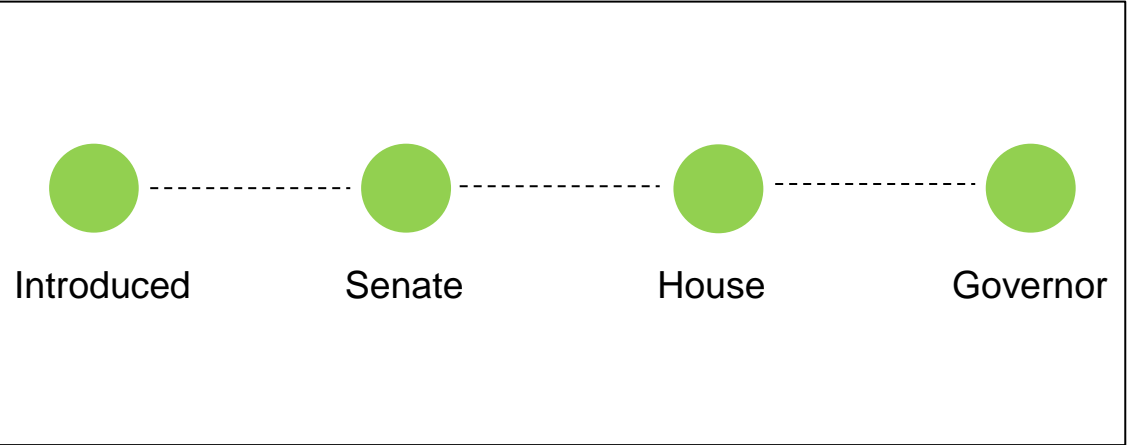
Child Care Provided by a School Corporation

Number: HB 1318

Sponsor: Snow

Description:

Allows a child care program or preschool program that is run by a public school or private school, or a program that provides day care or child care on the school premises for children of students or employees of schools in a school corporation, to be exempted from licensure as a child care facility.



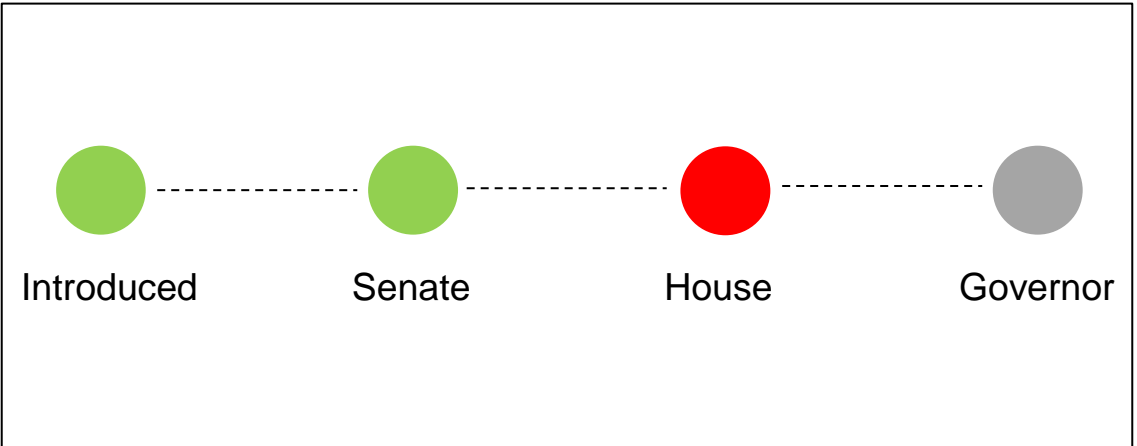
Status: SIGNED BY GOVERNOR.

HB 1318 sailed through the legislature, passing unanimously through both House and Senate committees and on the House and Senate floors.

Venture Capital Investment Tax Credit

Number: SB 223

Sponsor: Baldwin, S



Description:

The bill provides that, in the event that the Indiana Economic Development Corporation (IEDC) exceeds the \$20,000,000 maximum amount of tax credits in a particular calendar year, the IEDC may borrow credits from the next year. Indiana operates on a fiscal year, so this bill seeks to normalize with pace of business and to facilitate investment of qualified investment capital to a qualified Indiana business or investment fund. The bill also specifies that the borrowing of credits from a subsequent calendar year reduces the amount of credits available for the subsequent calendar year in an amount equal to the amount of credits borrowed in the preceding calendar year.

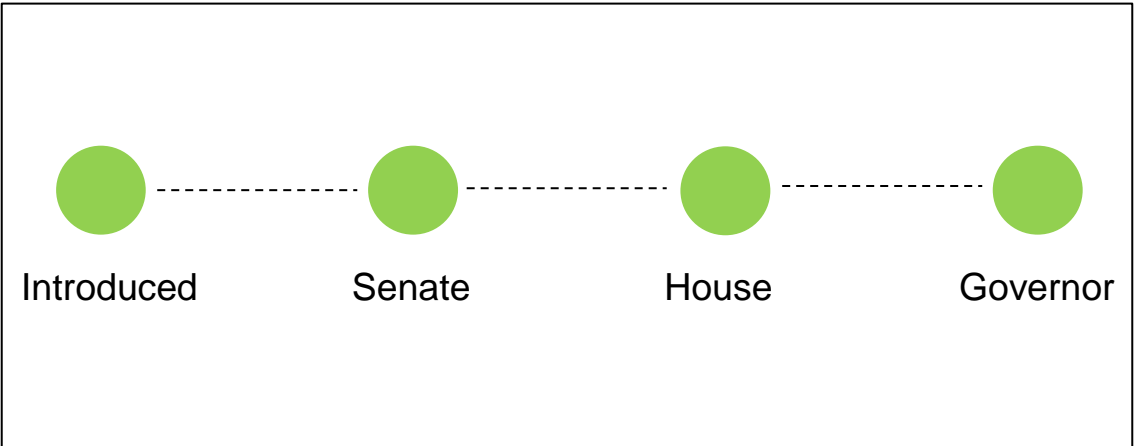
Status: DEAD BILL

Senator Baldwin shared that he carried the bill on behalf of the Indiana Technology Association who testified that the Venture Capital Investment Tax Credit is only of the most important economic tools supporting the tech industry in Indiana.

Statewide Sports and Tourism Bid Fund

Number: SB 245

Sponsor: Walker, K



Description: Creates a Sports and Tourism Bid Fund, which provides additional money for the Indiana Sports Corporation to bid on bring sporting events, trade shows and conventions to Indiana. 30% of the funding must be allocated to events outside of Marion County. The dollar amount allocated to the bid fund will not be decided until the 2023 legislative session as 2022 was not a budget year.

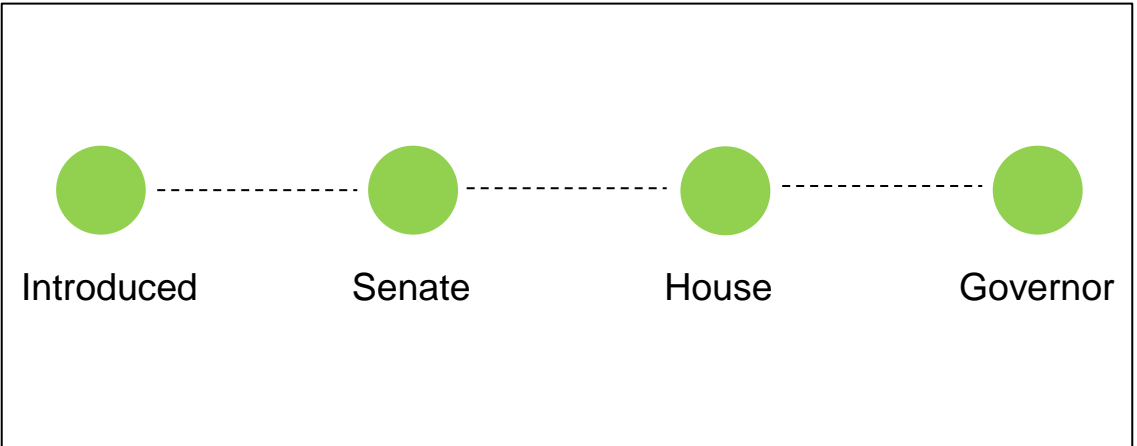
Status: SIGNED BY GOVERNOR.

President of the Indiana Sports Corporation, Ryan Vaughn, noted that the impetus for the legislation comes from the fact that “there are more than 15 states and dozens of cities that have some form of a public bid fund to support and attract and grow sports.”

Economic Development

Number: SB 361

Sponsor: Mishler, R



Description:

A significant provision of SEA361 focuses on adequate input by local governments in the formation of innovation districts (IDDs) designed to help the state land mega-deals involving thousands of jobs. The established IDD's would capture incremental property, state income, and sales taxes to go into a local fund to be used in the district. The fund would be controlled by the state, with oversight from locals per an agreement that would be created as defined by the legislation. If a deal is worth less than \$2B, the IEDC must receive consent from the local executive to move the project forward.

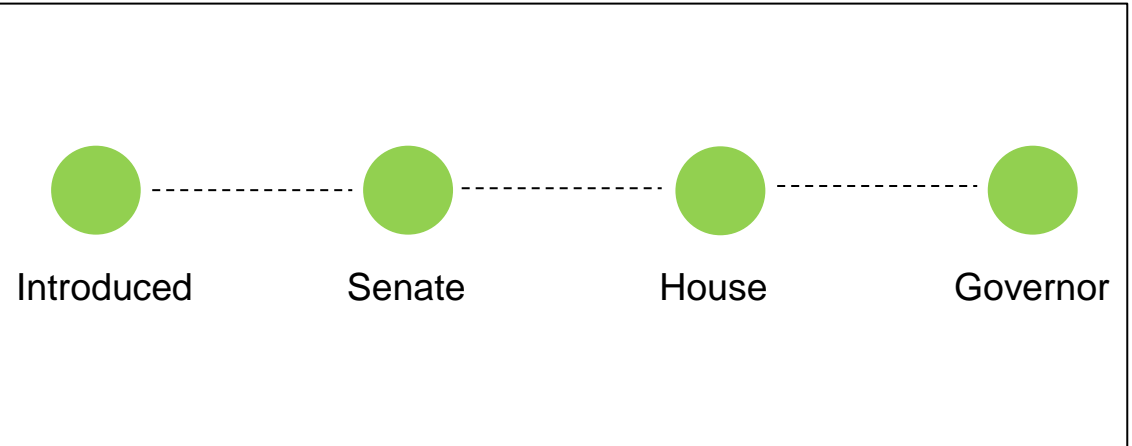
Status: SIGNED BY GOVERNOR

A priority bill of the Governor and of the Indiana Economic Development Association, SEA361 seeks to update the state's economic development toolkit to bring "mega-deals" to the state. The bills underwent several changes to accommodate for concerns by local government officials that the balance of power between state and local government in making decisions about these deals was unclear. Senator Holdman has indicated that some tweaks to this legislation should be expected during the 2023 Session.

Various Tax Matters

Number: SB 382

Sponsor: Holdman, T



Description: SB 382 contains several tax provisions including:

1. Decreases the existing tax on prefilled e-cigarette cartridges from 25% to 15% of wholesale price.
2. Requires state and local government employees to submit to background checks every five years (as opposed to 10 under current law)
3. Clarifies the reporting process used for distribution of Local Income Tax Revenue to conform to current practice.
4. Creates the Affordable and Workforce Housing Tax Credit.
5. Amends DOR reporting requirements for Food and Beverage taxes.

Status: SIGNED BY GOVERNOR

SB 382 is the Department of Revenue's Agency bill that included new tax credit programs and several tax reductions. SB 382 was one of the final bills to pass both Chambers during the 2022 Session.

Energy Tax Matters

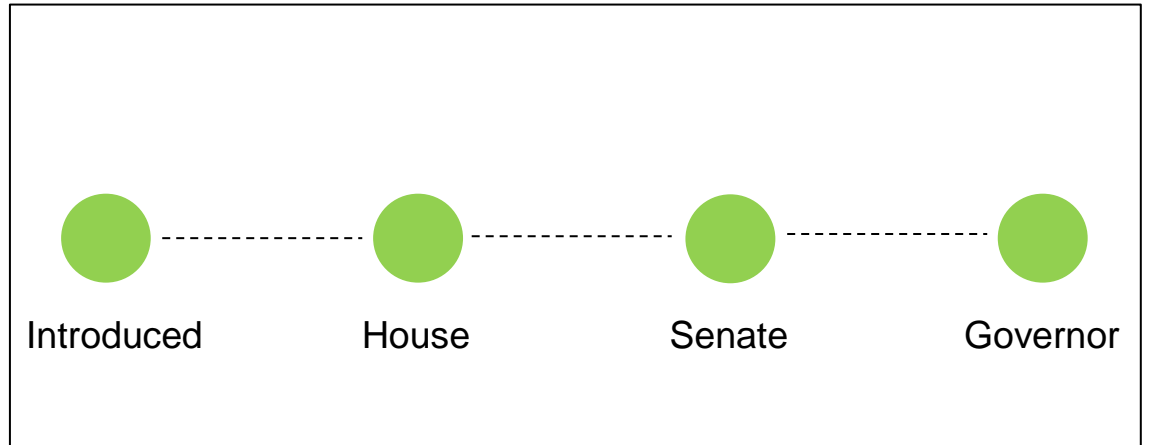
Number: HB 1002

Sponsor: Brown, T

Description: Despite being a high priority of the Governor and House Republicans, no sweeping changes to the State's approach to business personal property tax are in the final version of the bill. Senate majority members held firm based on the impact a reduction in BPP would have on local units. The only reduction in BPP went to Class 5 Steel Mills, or "mini-mills," as they are described in the bill.

1002 repeals both the utility receipts and utility services use taxes. The utility receipts tax is collected on all utility services consumed in Indiana while the utility services use tax is imposed on the retail consumption of utility services in the state. The tax is measured by the gross income received by the seller from the sale of electricity, natural gas, water, steam, sewage or telecommunications services.

Both taxes are currently set at a rate of 1.4%, and utilities are required to provide notice to all affected customers of the adjustment in rates.

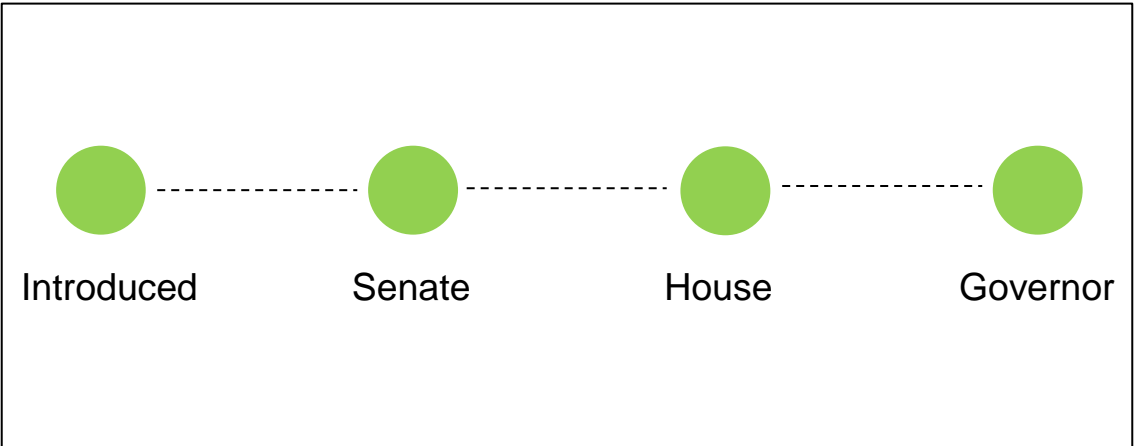


Status: Signed by Governor.

Energy

Number: SB 271

Sponsor: Koch, E



Description:

Paves the way for nuclear power by establishing a framework for utilities to build and operate small nuclear reactors. Requires the IURC to adopt rules concerning granting of certificates for construction, purchase, or lease of small modular nuclear reactors in Indiana for the generation of electricity. Grants financial incentives to companies that build and operate SMRs, with a preference for proposals that build SMRs on retired coal-plant sites.

Status: Signed by Governor.

2022 Primaries

- 26 House Incumbents with a Primary
- 3 Senate Incumbents with a Primary
- 6 GOP incumbents unseated



John Jacob



Dan Leonard



Curt Nisly



Jeff Ellington



John Young



Kevin Boehnlein

2022 Special Session

- Budget Surplus
 - 6 month reprieve from sales tax on all utility bills
 - Repeals the new increase in sales tax on gas and suspends increases until 6/30/23
 - Authorizes \$225 tax returns to Hoosiers
- Indiana passed abortion ban
 - Provides exceptions for the life of mother, rape and incest.
 - Creates the Hoosier Families First Fund to support mothers and children and allocates \$45M for assistance

2022 Summer Study Committees and Taskforces

2022 Topics

- Logistics of ensuring release-ready patients and offenders from Indiana psychiatric hospitals and the DOC are connected with appropriate care upon release.
- Multiyear study to eliminate, reduce, or streamline education mandates placed on schools.
- Securitization of costs for retired electric utility assets.
- Market concentration of the health insurance industry, health care practitioners, and pharmacy benefit managers.
- Issuance of drivers cards to those residents of Indiana who cannot provide proof of lawful status in the United States

2022 Topics, cont.

- Whether a health insurer or HMO should be required to exempt a participating health care provider from needing to receive prior authorization on a particular health care service if the provider has continuously received approval for the service for a number of months.
- Multi-year review of tax incentives.
- Multi-year review of workforce programs.
- School funding: complexity index formula
- Maternal mortality
- Delta 8, Delta 9, and other THC products

2022 Taskforces

- Administrative Rules Taskforce
 - How agencies use non-rule guidance in their operations
 - The number and subjects of emergency rules
- 21st Century Energy Development Taskforce
 - The status of energy efficiency efforts in Indiana
 - Methods to encourage electricity storage technology research, etc.
- Housing Taskforce
 - Review data on shortages in Indiana for low income and middle income housing.
 - Discrimination in housing appraisals

Section Three

Authentic Leadership
**What Leadership IS.
Why YOU Need to Lead.**

Sean M. Georges
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Section Three

Authentic Leadership

What Leadership IS.

Why YOU Need to Lead..... Sean M. Georges

PowerPoint Presentation

Authentic Leadership

What Leadership IS.
Why YOU Need to *Lead*.

Sean Georges, JD, LLM

Sept. 2022

WHAT IS THE PROBLEM?

WE ARE SUFFERING FROM A LACK
OF AUTHENTIC LEADERSHIP.

OUR ORGANIZATIONS.

OUR TEAMS.

OUR COMMUNITIES.

OUR PERSONAL LIVES.

HOW DO YOU DEFINE YOURSELF?

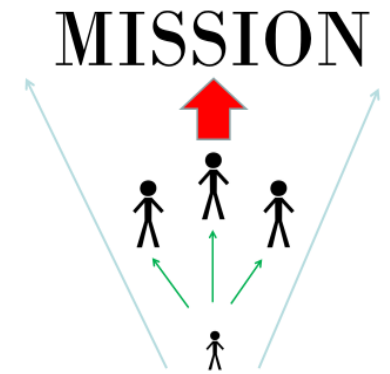
WHO ARE YOU?

AT WORK?

AT HOME?

IN COMMUNITY?

When YOU & I
Fail to Accept
Our Responsibility
To Lead,
We Create a Hole That
No One Else Can Fill.

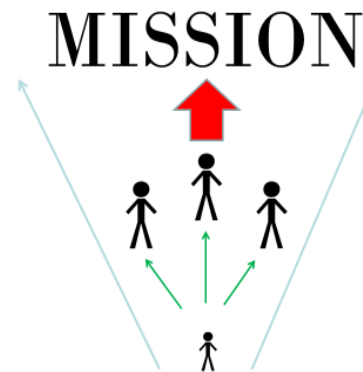


“LEADERS EAT LAST.”



“TAKE CARE OF YOUR MARINES FIRST.”

WHAT IS LEADERSHIP?

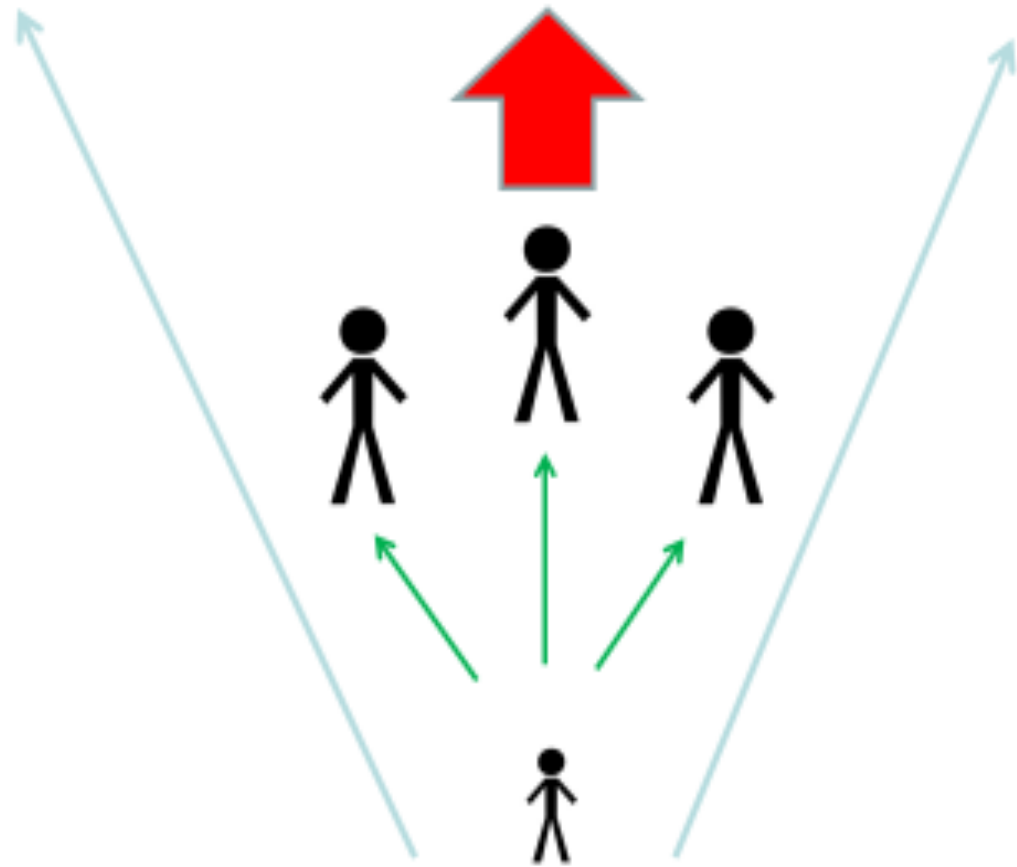


Leadership is
who you are and
what you do
to *influence* others
to *commit* and *act*
in accomplishing
a shared *mission*.



ON MISSION
LEADERSHIP

MISSION



WHAT IS MY
BEST AND HIGHEST ROLE,
TO *SERVE*

MY TEAMMATES,
IN LINE WITH
OUR *MISSION*?



A LEADER...

DOESN'T NEED TITLE OR RANK.

YOU JUST HAVE TO OWN
YOUR RESPONSIBILITY
TO SERVE
YOUR TEAMMATES
IN SUPPORT OF
THE TEAM'S MISSION.



ON MISSION
LEADERSHIP

Q: WHO DECIDES WHETHER I AM
A **LEADER**?

A: HERE'S A HINT: IT'S NOT YOU!

Q: WELL, THEN WHO DOES?

A: ANY PERSON WHO **PERMITS**
YOU TO **SHAPE THEIR THINKING,**
THEIR **ACTIONS,** OR THEIR
COMMITMENT.



LEAD IS A *VERB*.

LEAD PEOPLE.

MANAGE THINGS.

A LEADER
WITHOUT LOVE,
ISN'T.



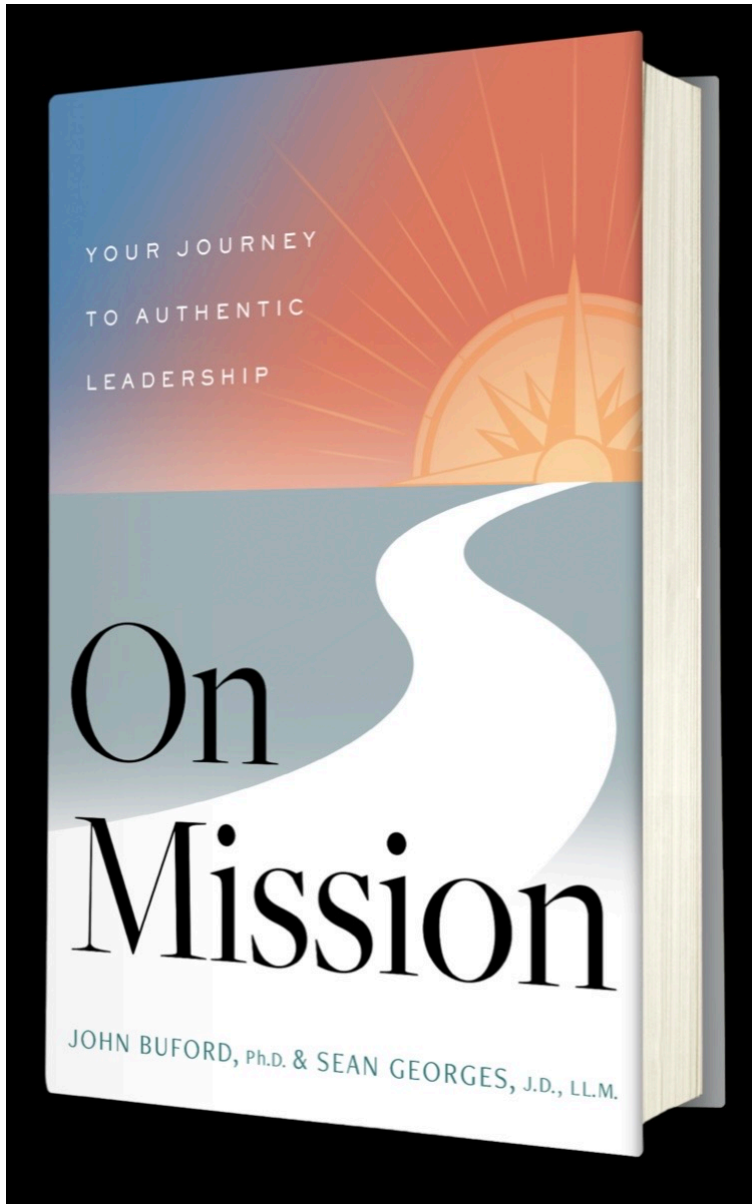
1. MISSION FOCUS
2. SHARED LEADERSHIP
3. MOVED AS A TEAM
4. AUDACITY OF BELIEF
5. SERVED ONE ANOTHER



WE ACCELERATE
OUR LEADERSHIP
GROWTH
BY TAKING AN
INTENTIONAL,
DELIBERATE
APPROACH
TO OUR LIFE'S
JOURNEY.



1. WHO ARE YOU (AS A LEADER)?
2. WHAT TEAMS ARE YOU ON?
3. WHAT WOULD LEADING (MISSION FOCUS . . . SERVANT LEADERSHIP) LOOK LIKE IN YOUR WORLD?
4. HOW WOULD IT CHANGE THE WAY YOU LAWYER?
5. HOW WOULD IT CHANGE THE WAY YOU ENGAGE WITH YOUR TEAM?
6. HOW WOULD IT CHANGE THE WAY YOU ENGAGE WITH SENIOR LEADERSHIP? WITH CLIENTS? WITH THE PUBLIC? WITH YOUR FAMILY?



Section Four

Internal Investigation Considerations

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Section Four

Internal Investigation Considerations..... Drew J. Miroff

A.	Should You Investigate/Is It Necessary Beneficial	1
B.	Planning the Investigation.....	2
C.	Carrying out the Investigation	4
D.	Completing the Investigation.....	6
E.	Act on Findings/Recommendations	6

Internal Investigation Considerations:

A. Should You Investigate/Is It Necessary Beneficial

1. What is intended purpose?
 - a. Situational triggers:
 - i. To investigate suspected, usually serious or potentially serious, wrongdoing
 - ii. To respond to allegations of potential wrongdoing
 - iii. Government investigations or enforcement actions
 - iv. Threatened or Actual lawsuits
 - b. Why/Benefits:
 - i. Determining potential liability/getting ahead
 - ii. Being proactive (and demonstrating proactivity)
 - iii. Control process
 - iv. Satisfying governance/fiduciary duties
 - v. Preventing repeat/future issues
 - vi. Social Media/PR (demonstration to employees and public that taking situation seriously)
 - vii. Mitigation of damages/severity of penalties
 - c. Risks
 - i. Findings/disclosure of findings can generate basis for liability and additional lawsuits.
 - ii. Can inadvertently delay initial reporting processes
 - iii. Negative business impact (stock price, employee morale, public perception)
 - iv. Costs
 - d. Preservation/Litigation Hold (make sure evidence not intentionally or inadvertently deleted or lost)
 - e. Consider Desirability of Privilege

- f. Consider likelihood of PR/Social Media and plan for same.

B. Planning the Investigation

1. Purpose, Purpose, Purpose

- a. Where intended for purpose of assessing and evaluating legal risks to company, make it clear that the single purpose is for gathering facts and information to evaluate and assess legal risks, exposure and litigation strategy.
- b. Consider communications/ memorandum stating this.

2. Who is commissioning the Investigation (who is the client)

- a. Company
- b. Board
- c. Special Committee
- d. CEO/President

3. Identify and assemble team

a. Who should lead investigation?

- i. Privilege
- ii. Conflicts/bias
- iii. Internal/External

1. Internal: HR, Senior Leadership, In House

2. External: Outside Counsel, Accounting Firm, Outside Experts

iv. Respected

v. Proper skill set

- 1. Interpersonal skills
- 2. Attention to detail/timeliness/thorough
- 3. Good judgment/instincts
- 4. Ability to maintain confidentiality
- 5. Ability to lead

- 6. Ability to reserve judgment until completion of investigation
 - vi. Knowledge of business
 - vii. Credibility as future witness
 - viii. Longevity in role (likely to be there for duration of investigation and subsequent proceedings)
 - b. Who is on team?
 - i. Similar considerations as above
4. Create Investigation Plan
- a. What is anticipated mission?
 - i. Scope/Goals
 - ii. Focused, but flexibility to allow investigation to take you where information naturally leads, but not required to turn over every stone and chase every potential matter.
 - b. Timing and Responsibilities
 - i. Must consider privilege implications
 - ii. If counsel not personally involved in each interview/task, must deputize/direct
 - c. Communication strategy
 - i. Must continue to consider impact to privilege
 - ii. Label communications appropriately, but don't over label
 - iii. Limit recipients
 - iv. Consider who is addressee (v. just copied)
 - v. Separate business advice from legal advice
 - vi. Reference potential litigation
 - d. Identify sources of information
 - i. Records
 - ii. ESI

- iii. Social Media
 - iv. Individuals likely to have information
 - e. Consider resources necessary to gather
 - i. IT
 - ii. Outside forensic
 - f. Consider confidentiality of gathering (i.e. before anyone is aware of investigation).

C. Carrying out the Investigation

1. Gather/Harvest and Review the “records” and documents
2. Create interview plan
 - a. Who should be interviewed?
 - i. Order, timing, location
 - ii. Goal is to gather truthful and complete information.
 - b. Who conducting?
 - i. Should be two people in each interview?
 - c. How memorializing?
 - i. Oral, written
 - ii. Notes/summary
 - d. Prepare Interview Outline
 - i. Anticipate issues and personality issues.
3. Conduct Interview
 - a. Review documents, but resist urge to reach conclusions.
 - b. Humanize process and anticipate/understand likely stress of interview.
 - i. Emphasize importance and appreciation for time.
 - ii. Emphasize process and others are being interviewed.
 - c. *Upjohn* Warning if attorney conducting

- i. Generally key components are: (i) lawyer for company (or whomever client is) not you, (ii) purpose is to learn about X in order to provide legal advice to company, (iii) privilege but belongs to company (explain waiver), and (iv) conversation should be confidential.
 - d. Do not/cannot provide assurances that information will remain confidential.
 - i. Try to be open-ended, non-leading.
 - ii. Be an active listener, but not judgmental.
 - iii. Make sure you are delineating between first-hand knowledge, speculation and hearsay.
 - iv. Be sensitive to nonverbal cues.
 - v. Best to let witness do talking and lead with what they think is important. Still must direct and get to topics that you believe they may have information on.
 - e. While conversational is generally more comfortable for witness, you must be careful about what you share as it can taint the witness and, more importantly, jeopardize privilege.
 - f. Avoid appearance of bias/impartiality
 - g. Evaluate and record credibility.
 - h. Always ask if there is anything else you should know, that you didn't cover, that they thought you might ask about or that they want you to know.
 - i. Ask witnesses for other sources of information.
 - j. Instruct to preserve all relevant documents and ensure evidence is not discarded – intentional or otherwise.
 - k. Confidentiality Reminder.
 - l. Former employees/third parties
 - i. Be careful regarding privilege.
 - ii. Focus on matters during tenure, do not disclose what happened since.
 - iii. Be careful whether employee will maintain confidence.
 - iv. Risk may outweigh reward.
 - m. Accurate Notes

- i. Should not look like a transcript, should look like work product
- ii. Time started/ended, giving of *Upjohn* warning
- iii. Assume they could end up being produced
- iv. Recording or transcribing actually minimizes privilege. Memorandum should include attorney impressions for work product.

D. Completing the Investigation

1. Report the Results

a. Present With Purpose In Mind

- i. Consider audience and method.
 1. Privilege
 2. Verbal/Written
 - a. Limit distribution and preclude redistribution
- ii. What to convey: Issues/Purpose, Methodology, Applicable Laws and Policies, Factual Findings, Conclusion and Recommendations.
- iii. Demonstrate thoroughness and fairness in process. Be accurate and precise with specific evidentiary support. Conclusions have consequences.
- iv. Be wary of providing non-legal advice.

2. Consider creating PR talking points and/or release.

E. Act on Findings/Recommendations

1. Mandatory (legal)/ Recommendations.
2. Self-Report (Mandatory/Voluntary)
3. Act quickly/decisively
4. Take actions to correct behavior/ensure no repeat
 - a. Training
 - b. Establish controls
 - c. Modify policies and procedures
 - d. Reorganization of departments
 - e. New compliance programs/guidelines/training