

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1362

AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 36-1-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Sec. 4. "Clerk" means:

- (1) clerk of the circuit court, for a county;
- (2) county auditor, for a board of county commissioners or county council;
- (3) clerk of the city-county council, for a consolidated city;
- (4) city clerk, for a second class city;
- (5) clerk-treasurer, for a third class city; ~~or~~
- (6) clerk-treasurer, for a town; **or**
- (7) **chief executive officer of a political subdivision not described in subdivisions (1) through (6).**

SECTION 2. IC 36-1-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Sec. 6. "Fiscal body" means:

- (1) county council, for a county not having a consolidated city;
- (2) city-county council, for a consolidated city or county having a consolidated city;

(3) common council, for a city other than a consolidated city;

(4) town council, for a town;

(5) township board, for a township; ~~or~~

(6) governing body or budget approval body, for any other political subdivision **that has a governing body or budget approval body; or**

(7) **chief executive officer of any other political subdivision that does not have a governing body or budget approval body.**

SECTION 3. IC 36-1-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Sec. 9. "Legislative body" means **the**:

- (1) board of county commissioners, for a county not subject to IC 36-2-3.5 or IC 36-3-1;
- (2) county council, for a county subject to IC 36-2-3.5;

- (3) city-county council, for a consolidated city or county having a consolidated city;
- (4) common council, for a city other than a consolidated city;
- (5) town council, for a town; ~~or~~
- (6) township board, for a township;
- (7) governing body of any other political subdivision that has a governing body; or
- (8) chief executive officer of any other political subdivision that does not have a governing body.

SECTION 4. IC 36-1.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 1.5. GOVERNMENT MODERNIZATION

Chapter 1. General Provisions

Sec. 1. The purpose of this article is to do the following:

(1) Grant broad powers to enable political subdivisions to operate more efficiently by eliminating restrictions under existing law that:

- (A) impede the economy of operation of;
- (B) interfere with the ease of administration of;
- (C) inhibit cooperation among; and
- (D) thwart better government by;

political subdivisions.

(2) Encourage efficiency by and cooperation among political subdivisions to:

- (A) reduce reliance on property taxes; and
- (B) enhance the ability of political subdivisions to provide

critical and necessary services.

(3) Strengthen the financial condition of state government.

Sec. 2. This article contains full and complete authority for the following:

- (1) Reorganization of political subdivisions.
- (2) Exercise of governmental functions under a cooperative agreement under this article.
- (3) Transfer of responsibilities between offices and officers under this article.

Sec. 3. Except as provided in this article, no law, procedure, proceedings, publications, notices, consents, approvals, orders, or acts by a political subdivision or any officer, department, agency, or instrumentality of the state or a political subdivision is required for political subdivisions to:

- (1) reorganize;
- (2) enter into or exercise governmental functions under a cooperative agreement; or
- (3) transfer responsibilities between offices and officers;

under this article.

Sec. 4. A political subdivision may exercise the powers granted under this article to reorganize or enter into cooperative agreements without complying with the provisions of any other law, statute, or rule.

Sec. 5. This article shall be liberally construed to effect the purposes of this article.

Sec. 6. Except as otherwise specifically provided by law, to the extent the provisions of this article are inconsistent with the provisions of any other general, special, or local law, the provisions of this article are controlling, and compliance with this article shall be treated as compliance with the conflicting law.

Sec. 7. This article does not prohibit the:

- (1) reorganization of one (1) or more political subdivisions;
 - (2) exercise of governmental functions under an interlocal cooperation agreement or a cooperative agreement; or
 - (3) transfer of responsibilities between offices and officers;
- under another law that is not included in this article.

Sec. 8. More than one (1) resolution permitted under this article may be consolidated into a combined resolution.

Sec. 9. Political subdivisions and reorganization committees acting under this article are subject to

IC 5-14-1.5 (open door law) and IC 5-14-3 (public records law).

Chapter 2. Definitions

Sec. 1. Except as provided in section 4 of this chapter, the definitions in IC 3-5-2 and IC 36-1-2 apply throughout this article.

Sec. 2. The definitions in this chapter apply throughout this article.

Sec. 3. "Plan of reorganization" refers to a plan of reorganization approved by the legislative body of each reorganizing political subdivision under this article.

Sec. 4. "Political subdivision" has the meaning set forth in IC 36-1-2, except that the term does not include a local hospital authority or corporation.

Sec. 5. "Reorganization" means a change in the structure or administration of a political subdivision described in IC 36-1.5-4-3 and IC 36-1.5-4-4.

Sec. 6. "Reorganization committee" refers to a committee established under this article to assist reorganizing political subdivisions with developing a plan of reorganization.

Sec. 7. "Reorganized political subdivision" means the political subdivision that is the successor to the reorganizing political subdivisions participating in a reorganization.

Sec. 8. "Reorganizing political subdivision" refers to a political subdivision in which:

- (1) a resolution has been adopted under IC 36-1.5-4-10; or
- (2) a petition has been filed under IC 36-1.5-4-11.

Chapter 3. Adjustment of Maximum Permissible Levies, Tax Rates, and Budgets

Sec. 1. A certified copy of an ordinance or a resolution, including any incorporated agreement, that is adopted under this article must be submitted to the department of local government finance.

Sec. 2. The department of local government finance may take an action under this chapter in the manner prescribed by the department of local government finance in its rules adopted under IC 4-22-2.

Sec. 3. A political subdivision may petition for judicial review of a final determination of the department of local government finance under this chapter. The petition must be filed in the tax court not more than forty-five (45) days after the department of local government finance enters its order under this chapter.

Sec. 4. Subject to this chapter, the department of local government finance shall adjust the maximum permissible

property tax levies, maximum permissible property tax rates, and budgets of political subdivisions that enter into a reorganization under this article as the department of local government finance determines necessary to do the following:

- (1) Eliminate double taxation by different political subdivisions for services or goods provided under this article.
- (2) Eliminate any excess by which the amount of property taxes imposed by a political subdivision exceeds the amount necessary to pay for services or goods provided under this article.
- (3) Restore taxing powers of a political subdivision after the termination of a reorganization under this article that are necessary to fund governmental services to the individuals and entities served by the political subdivision.
- (4) Restore taxing powers of a political subdivision after the withdrawal of a party from a reorganization under this article that are necessary to fund governmental services to the individuals and entities served by the political subdivision.

Sec. 5. The department shall establish a formula for adjusting maximum permissible property tax levies, maximum permissible property tax rates, and budgets under this chapter that permits a political subdivision (or a successor political subdivision) that realizes a:

- (1) savings to its taxpayers; or
 - (2) reduction in the reasonably foreseeable expenses that would otherwise be incurred by its taxpayers;
- through a reorganization under this article to continue to levy part of the realized savings or reduction.

The adjustment under this section may not exceed fifty percent (50%) of the savings or reduction realized in the first full year of operation after the reorganization is implemented, as determined by the department of local government finance.

Chapter 4. Reorganization by Referendum

Sec. 1. (a) Any of the following may reorganize under this chapter:

(1) Two (2) or more counties. A county reorganizing under this subdivision must be adjacent to at least one (1) other county participating in the reorganization.

(2) Two (2) or more townships located entirely within the same county. A township reorganizing under this subdivision must be adjacent to at least one (1) other township

participating in the reorganization.

(3) Two (2) or more municipalities. A municipality reorganizing under this subdivision must be adjacent to at least one (1) other municipality participating in the reorganization.

(4) Two (2) or more school corporations. A school corporation reorganizing under this subdivision must be adjacent to at least one (1) other school corporation participating in the reorganization.

(5) Two (2) or more municipal corporations, other than a unit or a school corporation, that have substantially equivalent powers. A municipal corporation reorganizing under this subdivision must be adjacent to at least one (1) other municipal corporation participating in the reorganization.

(6) Two (2) or more special taxing districts that are adjacent to at least one (1) other special taxing district participating in the reorganization.

(7) A township and a municipality that is located in any part of the same township.

(8) A county and one (1) or more townships that are located in the county.

(9) A municipality and a county that does not contain a consolidated city.

(10) A school corporation and a county or municipality in which a majority of the students of the school corporation have legal settlement (as defined by IC 20-18-2-11).

(11) A municipal corporation, other than a unit or a school corporation, and a county or municipality in which a majority of the population of the municipal corporation resides.

(b) If a political subdivision reorganizes under this article with one (1) or more other political subdivisions:

(1) any political subdivisions that did not participate in the public question on the reorganization are not reorganized under this article;

(2) the reorganization affects only those political subdivisions in which the reorganization is approved as specified in this article; and

(3) the reorganization does not affect the rights, powers, and duties of any political subdivisions in the county in which the reorganization is not approved as specified in this article.

Sec. 2. For purposes of this chapter, two (2) political

subdivisions may not be treated as adjacent if the political subdivisions are connected by a strip of land that is less than one hundred fifty (150) feet wide.

Sec. 3. Political subdivisions described in section 1 of this chapter may participate under this chapter in any of the following types of reorganization:

(1) Consolidation of the participating political subdivisions into a single new political subdivision.

(2) Consolidation of the participating political subdivisions into one (1) of the participating political subdivisions.

Sec. 4. As part of a reorganization in a finally approved plan of reorganization, one (1) or more of the reorganizing political subdivisions or the reorganized political subdivision may do the following:

(1) Adjust any of its boundaries.

(2) Establish a joint service area with another political subdivision.

(3) Transfer the functions of an office to another office.

(4) Provide for a legislative body, an executive, or a fiscal body of the reorganized political subdivision to exercise the powers of a legislative body, an executive, or a fiscal body of a reorganizing

political subdivision.

(5) Change the name of the political subdivision or select a new name.

Sec. 5. (a) Except as provided in subsection (b), a reorganization approved under this chapter takes effect when all of the following have occurred:

(1) The later of:

(A) the date that a copy of a joint certification from the county election board in each county in which reorganizing political subdivisions are located that indicates that:

(i) the reorganization has been approved by the voters of each reorganizing political subdivision; or

(ii) in the case of a reorganization described in section 1(a)(9) of this chapter, the reorganization has been approved as set forth in section 32(b) of this chapter; is recorded as required by section 31 of this chapter; or

(B) the date specified in the finally adopted plan of reorganization.

(2) The appointed or elected officers of the reorganized political subdivision are elected (as prescribed by section 36

of this chapter) or appointed and qualified, if:

(A) the reorganized political subdivision is a new political subdivision and reorganizing political subdivisions are not being consolidated into one (1) of the reorganizing political subdivisions;

(B) the reorganized political subdivision will have different boundaries than any of the reorganizing political subdivisions;

(C) the reorganized political subdivision will have different appointment or election districts than any of the reorganizing political subdivisions; or

(D) the finally adopted plan of reorganization requires new appointed or elected officers before the reorganization becomes effective.

(b) A reorganization approved under this chapter may not take effect during the year preceding a year in which a federal decennial census is conducted. A consolidation that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 2 of the year in which a federal decennial census is conducted.

Sec. 6. When a reorganization under this chapter is effective:

(1) all of the participating political subdivisions, except the reorganized political subdivision, cease to exist;

(2) unless the plan of reorganization provides for the continuation of the term of office, the term of each of the elected offices of each of the reorganizing political subdivisions is terminated;

(3) if the plan of reorganization transfers the responsibilities of any office to another office, the office from which the responsibilities were transferred is abolished;

(4) the executives, legislative bodies, and fiscal bodies of the reorganizing political subdivisions (other than any reorganizing political subdivision that is treated under the plan of reorganization as the successor reorganized political subdivision) are abolished, and the responsibilities of the executives, legislative bodies, and fiscal bodies are transferred to the executive, legislative body, and fiscal body of the reorganized political subdivision; and

(5) the property and liabilities of the reorganizing political subdivisions become the property and liabilities of the reorganized political subdivision, subject to section 40 of this

chapter.

Sec. 7. In the year before the year in which the participating political subdivisions are reorganized under this chapter:

(1) the fiscal bodies of the reorganizing political subdivisions shall, in the manner provided by IC 6-1.1-17, adopt tax levies, tax rates, and a budget for the reorganized political subdivision either through the adoption of substantially identical resolutions adopted by each of the fiscal bodies or, if authorized in the plan of reorganization, through a joint board established under an agreement of the fiscal bodies on

which the members of each of the fiscal bodies are represented; and

(2) if the reorganized political subdivision will have elected offices and different election districts than any of the reorganizing political subdivisions, the legislative bodies of the reorganizing political subdivisions shall establish the election districts either through the adoption of substantially identical resolutions adopted by each of the legislative bodies or, if authorized in the plan of reorganization, through a joint board established under an agreement of the legislative bodies on which the members of each of the legislative bodies are represented.

Sec. 8. The department of local government finance may prescribe forms for petitions, resolutions, certifications, and other writings required under this chapter. A petition, resolution, certification, or other writing related to a reorganization must be substantially in the form prescribed by the department of local government finance.

Sec. 9. A reorganization may be initiated by:

- (1) adopting a resolution under section 10 of this chapter; or
- (2) filing a petition under section 11 of this chapter.

Sec. 10. (a) The legislative body of a political subdivision may initiate a proposed reorganization under this chapter by adopting a resolution that:

- (1) proposes a reorganization;
- (2) names the political subdivisions that would be reorganized in the proposed reorganization; and
- (3) only in the case of a proposed reorganization described in section 1(a)(9) of this chapter, states whether the vote on the public question regarding the reorganization shall be:

(A) conducted on a countywide basis under section 30(b) of

this chapter, without a rejection threshold; or

(B) conducted on a countywide basis under section 30(b) of this chapter, with a rejection threshold.

(b) The clerk of the political subdivision adopting the resolution shall certify the resolution to the clerk of each political subdivision named in the resolution.

Sec. 11. (a) The voters of a political subdivision may initiate a proposed reorganization by filing a written petition, substantially in the form prescribed by the department, with the clerk of the political subdivision that:

- (1) proposes a reorganization; and
- (2) names the political subdivisions that would be reorganized in the proposed reorganization.

(b) If the written petition is signed by at least five percent (5%) of the voters of the political subdivision, as determined by the vote cast in the political subdivision for secretary of state at the most recent general election, the clerk of the political subdivision shall certify the petition to the legislative body of the political subdivision.

Sec. 12. (a) If a petition is certified to the legislative body of a political subdivision under section 11 of this chapter, the legislative body shall conduct a public hearing on the proposed reorganization not sooner than five (5) days after publishing a notice of the public hearing under IC 5-3-1. Not more than thirty (30) days after the conclusion of the public hearing the legislative body shall adopt a resolution, substantially in the form prescribed by the department of local government finance, to do any of the following:

- (1) Decline to participate in the proposed reorganization.
- (2) Propose a reorganization with the political subdivisions named in the petition.
- (3) Propose a reorganization with political subdivisions that differ in part or in whole from the political subdivisions named in the petition.

(b) In the case of a resolution adopted under this section proposing a reorganization described in section 1(a)(9) of this chapter, the resolution must also state whether the vote on the public question regarding the reorganization shall be:

(1) conducted on a countywide basis under section 30(b) of this chapter, without a rejection threshold; or