

January 30, 1998

SENATE BILL No. 191

DIGEST OF SB 191 (Updated January 29, 1998 12:24 pm - DI 44)

Citations Affected: IC 13-21.

Synopsis: Solid waste management district financing. Provides that if the total balances in the noncapital funds of a solid waste management district at the beginning of a calendar year exceed 25% of the district's total annual expenditures for the preceding calendar year, and the excess is greater than \$50,000, the excess shall be transferred to an operating expenditure excess fund. Provides that the portion of the excess that is attributable to property taxes may not be spent until it is included in a budget approved by the state board of tax commissioners. Provides that the district shall suspend or provide credits against fees to the extent that the excess is attributable to fees. Clarifies that public notice of hearings concerning establishment of fees must include newspaper publication.

Effective: July 1, 1998; January 1, 1999.

Gard

January 6, 1998, read first time and referred to Committee on Finance.
January 29, 1998, amended, reported favorably — Do Pass.

SB 191—LS 6731/DI 73



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January 30, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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SENATE BILL No. 191

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

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

- 1 SECTION 1. IC 13-21-3-13.7 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 1999]: **Sec. 13.7. (a) This section does**
4 **not apply to balances in the following funds:**
5 (1) A nonreverting capital fund established under section
6 12(24) of this chapter.
7 (2) A fund established under IC 13-21-7-8.
8 (3) The waste management district bond fund established
9 under IC 13-21-7-10.
10 (4) A fund established to secure the payment of principal and
11 interest under IC 13-21-12-1(12).
12 (5) Any other fund or revenue pledged to the payment of
13 principal or interest on any bonds issued under this article.
14 (6) Any other fund or portion of a fund used to establish
15 financial responsibility for the costs of closure and postclosure
16 monitoring and maintenance of a solid waste landfill or

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1 transfer station as required by IC 13-22-9.

2 (b) Before February 1 of each year, a district shall do the
3 following:

4 (1) Calculate the sum of the balances determined under
5 section 13.5(b)(1)(D) of this chapter as of December 31 of the
6 preceding year for all of the district's funds other than the
7 funds specified in subsection (a).

8 (2) If the sum determined under subdivision (1) exceeds
9 twenty-five percent (25%) of the district's total annual
10 expenditures for the preceding calendar year, transfer an
11 amount equal to that excess from the funds described in
12 subdivision (1) to a special fund to be known as the district's
13 operating expenditure excess fund. However, if the amount
14 that would be transferred in the operating expenditure excess
15 fund for a particular calendar year is less than fifty thousand
16 dollars (\$50,000), no money shall be transferred to the fund
17 for that year.

18 (3) Determine:

19 (A) the amount of money in the operating expenditure
20 excess fund that is attributable to property taxes paid to
21 the district;

22 (B) the amount of money in the operating expenditure
23 excess fund that is attributable to final disposal fees
24 collected by the district under IC 13-21-13; and

25 (C) the amount of money in the operating expenditure
26 excess fund that is attributable to solid waste management
27 fees collected under IC 13-21-14.

28 (c) A district may invest money in the district's operating
29 expenditure excess fund in the same manner in which money in the
30 district's other funds may be invested. However, any income
31 derived from the investment of the money shall be deposited in the
32 operating expenditure excess fund.

33 (d) The state board of tax commissioners shall require a district
34 to include the amount of money in the operating expenditure excess
35 fund that is attributable to property taxes paid to the district, as
36 determined under subsection (b)(3)(A), in the district's budget
37 fixed under IC 6-1.1-17. A district may not spend any of the money
38 described in this subsection until the expenditure has been included
39 in a budget that has been approved by the state board of tax
40 commissioners under IC 6-1.1-17. For purposes of fixing the
41 district's budget and for purposes of the property tax levy limits
42 imposed under IC 6-1.1-18.5, the district shall treat the money



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1 described in this subsection that the state board of tax
 2 commissioners permits a district to spend during a particular year
 3 as part of its ad valorem property tax levy for that same calendar
 4 year. Subject to the limitations imposed by this subsection, a
 5 district may use the money described in this subsection for any
 6 lawful purpose for which property taxes collected by the district
 7 may be used.

8 (e) Notwithstanding IC 13-21-13, if a district's operating
 9 expenditure excess fund contains any money that is attributable to
 10 the collection of final disposal fees, as determined under subsection
 11 (b)(3)(B), the board shall temporarily suspend collection of final
 12 disposal fees. The board shall notify the owner or operator of a
 13 final disposal facility who is responsible for collecting the final
 14 disposal fees of the suspension of the collection of final disposal fees
 15 and of the amount of money determined under subsection
 16 (b)(3)(B). The owner or operator of the final disposal facility shall
 17 continue to maintain the same records that would have been
 18 required if the fees had not been suspended. When the records of
 19 the owner or operator indicate that the total amount of waste
 20 disposed of during the period of the fee suspension multiplied by
 21 the rate of the final disposal fee equals ninety-nine percent (99%)
 22 of the amount of money determined under subsection (b)(3)(B), the
 23 owner or operator shall resume collection of the final disposal fee
 24 and notify the board that the suspension of final disposal fees has
 25 terminated. The owner or operator is entitled to a payment equal
 26 to one percent (1%) of the amount of money determined under
 27 subsection (b)(3)(B) as compensation for performing the duties
 28 required by this subsection. If the board suspends collection of
 29 final disposal fees under this subsection, the board may transfer
 30 the amount of money determined under subsection (b)(3)(B) from
 31 the operating expenditure excess fund to the funds that would
 32 otherwise have received money during the suspension and may use
 33 that money:

34 (1) to make the payment required to the owner or operator
 35 under this subsection; and

36 (2) for any other purposes for which final disposal fees may be
 37 used under this article.

38 (f) Notwithstanding IC 13-21-14, and subject to subsection (g),
 39 if a district's operating expenditure excess fund contains any
 40 money that is attributable to solid waste management fees, as
 41 determined under subsection (b)(3)(C), the board shall temporarily
 42 provide a credit to reduce the amount of the fees that would



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1 otherwise be paid by each person liable for payment of the fees.
 2 The credits shall be provided on a pro rata basis. The board shall
 3 terminate the credits when the total amount of credits provided
 4 equals the amount determined under subsection (b)(3)(C). If the
 5 board provides credits under this subsection, the board may
 6 transfer the amount of money determined under subsection
 7 (b)(3)(C) from the operating expenditure excess fund to the funds
 8 that would otherwise have received the fees for which credits were
 9 granted and may use that money for any purposes for which solid
 10 waste management fees may be used under this article.

11 (g) If:

12 (1) the board of a district determines that a temporary credit
 13 against solid waste management fees should be provided
 14 under subsection (f); and

15 (2) the district's solid waste management fees are collected by
 16 the county pursuant to a contract under IC 13-21-3-22;

17 the board shall notify the county of the amount of credits to be
 18 provided. The county shall provide the credits on a pro rata basis
 19 and shall terminate the credits when the total amount of credits
 20 determined by the board has been provided. Credits provided
 21 under this subsection do not reduce the amount of any collection
 22 charges to which the county is entitled under the contract.

23 SECTION 2. IC 13-21-13-1, AS AMENDED BY P.L.45-1997,
 24 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 1998]: Sec. 1. (a) A board may impose fees on the disposal of
 26 solid waste in a final disposal facility located within the district. A fee
 27 imposed by a board in a county with a population of more than one
 28 hundred seven thousand (107,000) and less than one hundred eight
 29 thousand (108,000) under this section may not exceed two dollars and
 30 fifty cents (\$2.50) a ton. A fee imposed by a board in other counties
 31 under this section may not exceed:

32 (1) two dollars and fifty cents (\$2.50) a ton; or

33 (2) the amount of a fee imposed by the board;

34 (A) under this section; and

35 (B) in effect on January 1, 1993;

36 whichever is greater.

37 (b) The board shall do the following:

38 (1) Set the amount of fees imposed under this section after a
 39 public hearing.

40 (2) Give public notice (as defined in IC 13-11-2-176) of the
 41 hearing.

42 (c) If solid waste has been subject to a district fee under this section,

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1 the total amount of the fee that was paid shall be credited against a
 2 district fee to which the solid waste may later be subject under this
 3 section.

4 (d) Except as provided in section 4 of this chapter, fees imposed
 5 under this chapter shall be imposed uniformly on public facilities and
 6 on privately owned or operated facilities throughout the district.

7 (e) A resolution adopted by a board that establishes fees under this
 8 chapter may contain a provision that authorizes the board to impose a
 9 penalty of not more than five hundred dollars (\$500) per day because
 10 of:

11 (1) nonpayment of fees; or

12 (2) noncompliance with a condition in the resolution.

13 (f) A board may not impose fees for material used as alternate daily
 14 cover pursuant to a permit issued by the department under 329
 15 IAC 10-20-13.

16 **(g) An increase in fees imposed under this section shall be made**
 17 **in the manner provided by subsection (b).**

18 SECTION 3. IC 13-21-14-5, AS ADDED BY P.L.1-1996,
 19 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 1998]: Sec. 5. (a) Fees shall be established only after public
 21 notice (**as defined in IC 13-11-2-176**) and a public hearing before the
 22 board at which:

23 (1) all persons using facilities, owning property, or generating
 24 solid waste within the district who are benefited by solid waste
 25 management; and

26 (2) other interested persons;

27 have an opportunity to be heard concerning the proposed fees.

28 (b) After introduction of a resolution fixing fees and before the
 29 resolution is adopted, public notice (**as defined in IC 13-11-2-176**) of
 30 the hearing, setting forth the schedule of fees, shall be given. The
 31 hearing may be adjourned as necessary.

32 (c) After the hearing the resolution establishing fees, either as
 33 originally introduced or as amended, shall be passed and put into
 34 effect.

35 (d) A copy of the schedule of fees established shall be kept:

36 (1) on file in the office of the board or the controller, secretary, or
 37 other recordkeeping officer of the district; and

38 (2) open to inspection by all interested persons.

39 (e) The fees established extend to cover any additional territory later
 40 served that falls within the same class without the necessity of a
 41 hearing or notice.

42 (f) ~~A change or readjustment of~~ **An increase of fees may shall be**

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1 made in the same manner as the fees were originally established.
2 provided by subsections (a) through (c).

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COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred Senate Bill 191, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 13 and 14, begin a new line block indented and insert:

"(6) Any other fund or portion of a fund used to establish financial responsibility for the costs of closure and postclosure monitoring and maintenance of a solid waste landfill or transfer station as required by IC 13-22-9."

Page 1, line 14, delete "At the end" and insert "**Before February 1**".

Page 1, line 16, after "chapter" insert "**as of December 31 of the preceding year**".

Page 1, after line 17, begin a new line block indented and insert:

"(2) If the sum determined under subdivision (1) exceeds twenty-five percent (25%) of the district's total annual expenditures for the preceding calendar year, transfer an amount equal to that excess from the funds described in subdivision (1) to a special fund to be known as the district's operating expenditure excess fund. However, if the amount that would be transferred in the operating expenditure excess fund for a particular calendar year is less than fifty thousand dollars (\$50,000), no money shall be transferred to the fund for that year.

(3) Determine:

(A) the amount of money in the operating expenditure excess fund that is attributable to property taxes paid to the district;

(B) the amount of money in the operating expenditure excess fund that is attributable to final disposal fees collected by the district under IC 13-21-13; and

(C) the amount of money in the operating expenditure excess fund that is attributable to solid waste management fees collected under IC 13-21-14.

(c) A district may invest money in the district's operating expenditure excess fund in the same manner in which money in the district's other funds may be invested. However, any income derived from the investment of the money shall be deposited in the operating expenditure excess fund.

(d) The state board of tax commissioners shall require a district to include the amount of money in the operating expenditure excess



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fund that is attributable to property taxes paid to the district, as determined under subsection (b)(3)(A), in the district's budget fixed under IC 6-1.1-17. A district may not spend any of the money described in this subsection until the expenditure has been included in a budget that has been approved by the state board of tax commissioners under IC 6-1.1-17. For purposes of fixing the district's budget and for purposes of the property tax levy limits imposed under IC 6-1.1-18.5, the district shall treat the money described in this subsection that the state board of tax commissioners permits a district to spend during a particular year as part of its ad valorem property tax levy for that same calendar year. Subject to the limitations imposed by this subsection, a district may use the money described in this subsection for any lawful purpose for which property taxes collected by the district may be used.

(e) Notwithstanding IC 13-21-13, if a district's operating expenditure excess fund contains any money that is attributable to the collection of final disposal fees, as determined under subsection (b)(3)(B), the board shall temporarily suspend collection of final disposal fees. The board shall notify the owner or operator of a final disposal facility who is responsible for collecting the final disposal fees of the suspension of the collection of final disposal fees and of the amount of money determined under subsection (b)(3)(B). The owner or operator of the final disposal facility shall continue to maintain the same records that would have been required if the fees had not been suspended. When the records of the owner or operator indicate that the total amount of waste disposed of during the period of the fee suspension multiplied by the rate of the final disposal fee equals ninety-nine percent (99%) of the amount of money determined under subsection (b)(3)(B), the owner or operator shall resume collection of the final disposal fee and notify the board that the suspension of final disposal fees has terminated. The owner or operator is entitled to a payment equal to one percent (1%) of the amount of money determined under subsection (b)(3)(B) as compensation for performing the duties required by this subsection. If the board suspends collection of final disposal fees under this subsection, the board may transfer the amount of money determined under subsection (b)(3)(B) from the operating expenditure excess fund to the funds that would otherwise have received money during the suspension and may use that money:

(1) to make the payment required to the owner or operator

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under this subsection; and

(2) for any other purposes for which final disposal fees may be used under this article.

(f) Notwithstanding IC 13-21-14, and subject to subsection (g), if a district's operating expenditure excess fund contains any money that is attributable to solid waste management fees, as determined under subsection (b)(3)(C), the board shall temporarily provide a credit to reduce the amount of the fees that would otherwise be paid by each person liable for payment of the fees. The credits shall be provided on a pro rata basis. The board shall terminate the credits when the total amount of credits provided equals the amount determined under subsection (b)(3)(C). If the board provides credits under this subsection, the board may transfer the amount of money determined under subsection (b)(3)(C) from the operating expenditure excess fund to the funds that would otherwise have received the fees for which credits were granted and may use that money for any purposes for which solid waste management fees may be used under this article.

(g) If:

(1) the board of a district determines that a temporary credit against solid waste management fees should be provided under subsection (f); and

(2) the district's solid waste management fees are collected by the county pursuant to a contract under IC 13-21-3-22;

the board shall notify the county of the amount of credits to be provided. The county shall provide the credits on a pro rata basis and shall terminate the credits when the total amount of credits determined by the board has been provided. Credits provided under this subsection do not reduce the amount of any collection charges to which the county is entitled under the contract."

Delete pages 2 through 3.

Page 4, delete lines 1 through 4.

Page 4, delete lines 13 through 25, begin a new line blocked left and insert:

"under this section may not exceed:

(1) two dollars and fifty cents (\$2.50) a ton; or

(2) the amount of a fee imposed by the board;

(A) under this section; and

(B) in effect on January 1, 1993;

whichever is greater.

(b) The board shall do the following:

(1) Set the amount of fees imposed under this section after a

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public hearing.

(2) Give public notice (as defined in IC 13-11-2-176) of the hearing."

Page 4, between lines 41 and 42, begin a new paragraph and insert:

"(g) An increase in fees imposed under this section shall be made in the manner provided by subsection (b).

SECTION 3. IC 13-21-14-5, AS ADDED BY P.L.1-1996, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) Fees shall be established only after public notice (as defined in IC 13-11-2-176) and a public hearing before the board at which:

- (1) all persons using facilities, owning property, or generating solid waste within the district who are benefited by solid waste management; and
- (2) other interested persons;

have an opportunity to be heard concerning the proposed fees.

(b) After introduction of a resolution fixing fees and before the resolution is adopted, public notice (as defined in IC 13-11-2-176) of the hearing, setting forth the schedule of fees, shall be given. The hearing may be adjourned as necessary.

(c) After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect.

(d) A copy of the schedule of fees established shall be kept:

- (1) on file in the office of the board or the controller, secretary, or other recordkeeping officer of the district; and
- (2) open to inspection by all interested persons.

(e) The fees established extend to cover any additional territory later served that falls within the same class without the necessity of a hearing or notice.

(f) ~~A change or readjustment of~~ **An increase of fees may shall** be made in the ~~same~~ manner as ~~the fees were originally established.~~ **provided by subsections (a) through (c).**"

Page 4, delete line 42.

Delete page 5.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to Senate Bill 191 as introduced.)

BORST, Chairperson

Committee Vote: Yeas 8, Nays 6.

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