

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

HOUSE ENROLLED ACT No. 1068

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 6-1.1-18.5-10.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2001]: Sec. 10.4. (a) The ad valorem property tax levy limits imposed by section 3 of this chapter do not apply to ad valorem property taxes imposed by a township **or a fire protection district** under IC 36-8-14.

(b) For purposes of computing the ad valorem property tax levy limit imposed on a township **or a fire protection district** under section 3 of this chapter, the township's **or the fire protection district's** ad valorem property tax levy for a particular calendar year does not include that part of the levy imposed under IC 36-8-14.

SECTION 2. IC 36-8-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. As used in this chapter:

"Board" refers to the board of fire trustees of a fire protection district.

"Fiscal officer" means a bonded employee of the fire protection district charged with the faithful receipt and disbursement of the funds of the district.

"Freeholder" means an individual who holds land in fee, for life, or for some indeterminate period of time, whether or not in joint title.

"Interested person" includes a freeholder or corporation owning lands within the proposed or established fire protection district, a

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person whose property may be condemned or injured by the district, the proper officer of a municipality, an affected state agency, and all local plan commissions.

"Joint title" means joint tenancy, tenancy in common, or tenancy by the entireties.

"Primary county" refers to the county where the largest portion of a municipality is located if the municipality is located in two (2) counties.

"Secondary county" refers to the county where the smallest portion of a municipality is located if the municipality is located in two (2) counties.

SECTION 3. IC 36-8-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. (a) A county legislative body may establish fire protection districts for any of the following purposes:

- (1) Fire protection, including the capability for extinguishing all fires that might be reasonably expected because of the types of improvements, personal property, and real property within the boundaries of the district.
- (2) Fire prevention, including identification and elimination of all potential and actual sources of fire hazard.
- (3) Other purposes or functions related to fire protection and fire prevention.

(b) Any area may be established as a fire protection district, but one (1) part of a district may not be completely separate from another part. A municipality may be included in a district, but only if it consents by ordinance, unless a majority of the freeholders of the municipality have petitioned to be included in the district.

(c) **Except as provided in subsection (d)**, the territory of a district may consist of:

- (1) one (1) or more townships and parts of one (1) or more townships in the same county; or
- (2) all of the townships in the same county.

The boundaries of a district need not coincide with those of other political subdivisions.

(d) The territory of a district may consist of a municipality that is located in more than one (1) county.

SECTION 4. IC 36-8-11-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 5. (a) Freeholders who desire the establishment of a fire protection district must initiate proceedings by filing a petition in the office of the county auditor **of the county where the freeholder's land is located.** The petition may

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also be filed by a municipality under an ordinance adopted by its legislative body **in each county where the municipality is located.**

(b) The petition must be signed:

(1) by at least twenty percent (20%), with a minimum of five hundred (500), of the freeholders owning land within the proposed district; or

(2) by a majority of those freeholders owning land within the proposed district;

whichever number is less.

(c) **This subsection applies to a district that consists of a municipality located in two (2) counties. The petitions filed in each county as set forth in section 5.1 of this chapter shall be considered parts of one (1) petition. The signature requirement of subsection (b) applies to the sum of the signatures on all parts of the petition.**

SECTION 5. IC 36-8-11-5.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 5.1. (a) This section applies to a district that consists of a municipality located in two (2) counties.**

(b) **This section does not apply to a merged district under section 23 of this chapter.**

(c) **Freeholders within the proposed district who desire the establishment of a fire protection district must initiate proceedings by filing a petition to establish the district with the county auditor of the county where the freeholder's land is located. Sections 6 and 7 of this chapter apply to a petition filed under this section. The number of freeholders who signed a petition shall be certified by the county auditor of the county that is the subject of the petition. If a petition is filed in both counties, the county auditor of the secondary county shall forward the petition to the primary county.**

(d) **The county auditor of the primary county shall present the petition to the legislative body of the primary county at its next regularly scheduled meeting or at a special meeting called for that purpose. Before or at the meeting, the legislative body shall determine whether the petition bears the necessary signatures and complies with requirements as to form and content. The legislative body may not dismiss a petition with the requisite signatures because of alleged defects without permitting amendments to correct errors in form or content.**

(e) **In determining whether the signers of a petition are freeholders, the names as they appear on the tax duplicates are prima facie evidence of the ownership of land.**

(f) **If the legislative body of the primary county determines that**

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the petition conforms to the requirements of this chapter, the primary county or the secondary county, or both, may set a date for a public hearing on whether a fire protection district should, as a matter of public policy, be established in the area proposed in the petition. The district is established when both legislative bodies adopt an identical ordinance or resolution establishing the district.

SECTION 6. IC 36-8-11-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 9.5. (a) This section applies to a district that contains a municipality located in two (2) counties.**

(b) This section does not apply to a merged district under section 23 of this chapter.

(c) The freeholders owning land within the proposed district may file a petition opposing the establishment of the district with the county auditor of the county where the freeholder's land is located. If a petition is filed in both counties, the county auditor of the secondary county shall forward the petition to the primary county and certify to the primary county the number of freeholders who signed the petition. A petition against the establishment of the fire protection district must be presented to the legislative body of the primary county at or after a hearing on the petition to establish a district and before the adoption of an ordinance or resolution establishing the district.

(d) If the legislative body of the primary county finds that the petition contains the signatures of fifty-one percent (51%) of the freeholders within the proposed district or of the freeholders who own two-thirds (2/3) of the real property within the proposed district, determined by assessed valuation, the legislative body shall dismiss the petition for the establishment of the district.

SECTION 7. IC 36-8-11-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 11.** To add area to a fire protection district already established, the same procedure must be followed as is provided for the establishment of a district. The petition must be addressed to the legislative body of ~~the~~ **each** county in which the district is located.

SECTION 8. IC 36-8-11-22.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 22.1. (a) This section applies to a district that consists of a municipality that is located in two (2) counties.**

(b) This section does not apply to a merged district under section 23 of this chapter.



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(c) Sections 6 and 7 of this chapter apply to the petition.

(d) The board of fire trustees for the district shall be appointed as prescribed by section 12 of this chapter. However, the legislative body of each county within which the district is located shall jointly appoint one (1) trustee from each township or part of a township contained in the district and one (1) trustee from the municipality contained in the district. The legislative body of each county shall jointly appoint a member to fill a vacancy.

(e) Sections 13, 14, and 15 of this chapter relating to the board of fire trustees apply to the board of the district. However, the county legislative bodies serving the district shall jointly decide where the board shall locate (or approve location of) its office.

(f) Sections 16, 17, 18, 19, and 21 of this chapter relating to the taxing district, bonds, annual budget, tax levies, and disbanding of fire departments apply to the district. However, the budget must be approved by the county fiscal body and county board of tax adjustment in each county in the district. In addition, the auditor of each county in the district shall perform the duties described in section 18(c) of this chapter.

SECTION 9. IC 36-8-11-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 24. (a) Proceedings to dissolve a fire protection district may be instituted by the filing of a petition with the county legislative body that formed the district. **If the proceedings are for dissolution of a district to which section 5.1 of this chapter applies, the proceedings may be instituted by the filing of a petition with the primary county or the secondary county, or both.**

(b) The petition must be signed:

- (1) by at least twenty percent (20%), with a minimum of five hundred (500), of the freeholders owning land within the district; or
- (2) by a majority of those freeholders owning land within the district;

whichever is less.

(c) **Except as provided in subsection (d)**, the provisions of section 8 of this chapter concerning a petition to establish a district apply to a dissolution petition.

(d) **If the district is established under section 5.1 of this chapter, the provisions of section 5.1 of this chapter apply to a petition to dissolve the district.**

(e) **Except as provided in subsection (f)**, a petition against the dissolution of the fire protection district may be presented to the county

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legislative body at or after a hearing on the petition to dissolve a district and before the adoption of an ordinance or resolution dissolving the district. If the legislative body finds that it contains the signatures of fifty-one percent (51%) of the freeholders within the district or of the freeholders who own two-thirds (2/3) of the real property within the district, determined by assessed valuation, the legislative body shall dismiss the petition for the dissolution of the district.

~~(e)~~ **(f) If a district is established under section 5.1 of this chapter, the provisions of section 9.5 of this chapter apply to a petition to dissolve the district.**

(g) If, after the public hearing, the legislative body determines that dissolution should occur, it shall adopt an ordinance dissolving the district. **If the district is established under section 5.1 of this chapter, both legislative bodies of the counties containing the district must adopt ordinances dissolving the district after determining in a public hearing that the district should be dissolved.**

~~(f)~~ **(h)** A dissolution takes effect three (3) months after **the later of** the adoption of the ordinance under subsection ~~(a)~~ **(g) or the payment of the district's debts and liabilities, including its liabilities under IC 34-13-2 and IC 34-13-3.** The property owned by the district after payment of debts and liabilities shall be disposed of in the manner chosen by the county legislative body **or county legislative bodies.** Dissolution of a district does not affect the validity of any contract to which the district is a party.

~~(g)~~ **(i)** A person aggrieved by a decision made by the county legislative body **or county legislative bodies** under this section may, within thirty (30) days, appeal the decision to the circuit court for ~~the~~ **any** county in which the district is located. The appeal is instituted by giving written notice to ~~the each~~ county legislative body **within which the district is located** and filing with the circuit court clerk a bond in the sum of five hundred dollars (\$500), with surety approved by the legislative body **or legislative bodies.** The bond must provide that the appeal will be duly prosecuted and that the appellants will pay all costs if the appeal is decided against them. When an appeal is instituted, the county legislative body **or county legislative bodies** shall file with the circuit court clerk a transcript of all proceedings in the case, together with all papers filed in the case. The county legislative body **or county legislative bodies** may not take further action in the case until the appeal is heard and determined. An appeal under this subsection shall be heard by the circuit court without a jury. Change of venue from the judge may be granted, but change of venue from the county may not be



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granted.

SECTION 10. IC 36-8-19-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.5. (a) Participating units may agree to establish an equipment replacement fund under this section to be used to purchase fire protection equipment, **including housing**, that will be used to serve the entire territory. To establish the fund, the legislative bodies of all participating units must adopt identical ordinances after January 1 but before April 1 authorizing the provider unit to establish the fund. The ordinance must include at least the following:

- (1) The name of each participating unit and the provider unit.
- (2) An agreement to impose a uniform tax rate upon all of the taxable property within the territory for the equipment replacement fund.
- (3) The contents of the agreement to establish the fund.

An ordinance adopted under this section takes effect July 1 of the year the ordinance is adopted.

(b) If a fund is established, the participating units may agree to:

- (1) impose a property tax to provide for the accumulation of money in the fund to purchase fire protection equipment;
- (2) incur debt to purchase fire protection equipment and impose a property tax to retire the loan; or
- (3) transfer an amount from the fire protection territory fund to the fire equipment replacement fund not to exceed five percent (5%) of the levy for the fire protection territory fund for that year;

or any combination of these options. The property tax rate for the levy imposed under this section may not exceed ten cents (\$0.10). Before debt may be incurred, the fiscal bodies of all participating units must adopt identical ordinances specifying the amount and purpose of the debt. In addition, the state board of tax commissioners must approve the incurrence of the debt using the same standards as applied to the incurrence of debt by civil taxing units.

(c) Money in the fund may be used by the provider unit only for those purposes set forth in the agreement among the participating units that permits the establishment of the fund.

SECTION 11. IC 36-8-11-1 IS REPEALED [EFFECTIVE JULY 1, 2000].

SECTION 12. [EFFECTIVE JULY 1, 2000] **IC 6-1.1-18.5-10.4, as amended by this act, applies to property taxes first due and payable after December 31, 2000.**

SECTION 13. **An emergency is declared for this act.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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