



January 26, 2007

SENATE BILL No. 346

DIGEST OF SB 346 (Updated January 24, 2007 11:39 am - DI 106)

Citations Affected: IC 7.1-3; IC 36-3; IC 36-4; IC 36-7.

Synopsis: Marion County superior courts. Removes the requirement that certain judicial decisions made by the superior court of Marion County be made en banc or by a majority of the judges.

Effective: July 1, 2007.

Bray, Lubbers, Breaux

January 11, 2007, read first time and referred to Committee on Judiciary.
January 25, 2007, reported favorably — Do Pass.

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SB 346—LS 7541/DI 106+



January 26, 2007

First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

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SENATE BILL No. 346



A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

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

1 SECTION 1. IC 7.1-3-23-31 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 31. Appeal by
 3 Applicant for Wholesalers' Permit. An applicant aggrieved by the
 4 action of the commission in denying, failing to renew, or revoking, a
 5 wholesaler's permit of any type, contrary to the provisions of IC 1971,
 6 7.1-3-23-30, shall have the right to secure a review of that
 7 determination by petition to the superior court of Marion County under
 8 the same conditions and in the same manner and mode of procedure as
 9 provided in this chapter for other appeals. The ~~judges of the superior~~
 10 ~~court of Marion County, or a majority of them sitting in the action for~~
 11 ~~review~~ shall, from the evidence presented, determine if the applicant
 12 has been denied a permit or renewal, or has had his permit revoked, on
 13 arbitrary, capricious, or political grounds and if ~~they so determine the~~
 14 **court determines that the permit or renewal was improperly**
 15 **denied or revoked, the court** shall issue a writ of mandate ordering
 16 the commission to issue, renew, or reinstate the permit. However,
 17 either party shall have the right of appeal from the judgment of the

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1 superior court of Marion County as an appeal is taken in a civil action.
 2 SECTION 2. IC 36-3-4-3, AS AMENDED BY P.L.230-2005,
 3 SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2007]: Sec. 3. (a) The city-county legislative body shall, by
 5 ordinance, divide the whole county into twenty-five (25) districts that:
 6 (1) are compact, subject only to natural boundary lines (such as
 7 railroads, major highways, rivers, creeks, parks, and major
 8 industrial complexes);
 9 (2) contain, as nearly as is possible, equal population; and
 10 (3) do not cross precinct boundary lines.
 11 This division shall be made during the second year after a year in
 12 which a federal decennial census is conducted and may also be made
 13 at any other time, subject to IC 3-11-1.5-32.
 14 (b) The legislative body is composed of twenty-five (25) members
 15 elected from the districts established under subsection (a) and four (4)
 16 members elected from an at-large district containing the whole county.
 17 (c) Each voter of the county may vote for four (4) candidates for
 18 at-large membership and one (1) candidate from the district in which
 19 the voter resides. The four (4) at-large candidates receiving the most
 20 votes from the whole county and the district candidates receiving the
 21 most votes from their respective districts are elected to the legislative
 22 body.
 23 (d) If the legislative body fails to make the division before the date
 24 prescribed by subsection (a) or the division is alleged to violate
 25 subsection (a) or other law, a taxpayer or registered voter of the county
 26 may petition the superior court of the county to hear and determine the
 27 matter. There may not be a change of venue from the court or from the
 28 county. The court ~~sitting en banc~~ may appoint a master to assist in its
 29 determination and may draw proper district boundaries if necessary. An
 30 appeal from the court's judgment must be taken within thirty (30) days,
 31 directly to the supreme court, in the same manner as appeals from other
 32 actions.
 33 (e) An election of the legislative body held under the ordinance or
 34 court judgment determining districts that is in effect on the date of the
 35 election is valid, regardless of whether the ordinance or judgment is
 36 later determined to be invalid.
 37 SECTION 3. IC 36-4-4-5 IS AMENDED TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) If uncertainty exists or a
 39 dispute arises concerning the executive or legislative nature of a power
 40 or duty exercised or proposed to be exercised by a branch, officer,
 41 department, or agency of the government of a municipality, a petition
 42 may be filed in the circuit court of the county in which the municipality

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1 is located by the municipal executive, another municipal elected
 2 official, the president of the municipal legislative body, or any person
 3 who alleges and establishes to the satisfaction of the court that ~~he~~ **the**
 4 **person** is or would be adversely affected by the exercise of the power;
 5 however, in a county ~~having that does not contain a consolidated city~~
 6 **and that has** a superior court ~~that has with~~ three (3) or more judges,
 7 the petition shall be filed in the superior court and shall be heard and
 8 determined by the court sitting en banc.

9 (b) The petition must set forth the action taken or the power
 10 proposed to be exercised, and all facts and circumstances relevant to a
 11 determination of the nature of the power, and must request that the
 12 court hear the matter and determine which branch, officer, department,
 13 or agency of the municipality, if any, is authorized to exercise the
 14 power. On the filing of the petition, the clerk of the court shall issue
 15 notice to the municipal executive, each municipal elected official, and
 16 the president of the municipal legislative body, unless the petition was
 17 filed by that person, and to the municipal attorney, department of law,
 18 or legal division.

19 (c) The court shall determine the matters set forth in the petition and
 20 shall affix the responsibility for the exercise of the power or the
 21 performance of the duty, unless it determines that the power or duty
 22 does not exist. Costs of the proceeding shall be paid by the
 23 municipality, except that if an appeal is taken from the decision of the
 24 court by any party to the proceeding other than the municipal
 25 executive, another municipal elected official, or the president of the
 26 municipal legislative body, the costs of the appeal shall be paid by the
 27 unsuccessful party on appeal or in the manner directed by the court
 28 deciding the appeal.

29 SECTION 4. IC 36-7-15.1-11 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. (a) A person who
 31 filed a written remonstrance with the commission under section 10 of
 32 this chapter and is aggrieved by the final action taken may, within ten
 33 (10) days after that final action, file with the presiding judge of the
 34 superior court a copy of the order of the commission and ~~his~~ **the**
 35 **person's** remonstrance against that order, together with ~~his~~ **the**
 36 **person's** bond, as provided by IC 34-13-5-7, in the event the appeal is
 37 determined against ~~him~~ **the person**. The burden of proof is on the
 38 remonstrator, and no change of venue may be granted.

39 (b) An appeal under this section shall be promptly heard by the
 40 court without a jury. **Except in a county containing a consolidated**
 41 **city**, all the judges of the court, or a majority of the judges if not all are
 42 available, shall hear the appeal. **In a county containing a**

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1 **consolidated city, the appeal shall be heard by one (1) judge unless**
2 **rules adopted by the court or by the Indiana supreme court require**
3 **an appeal to be heard by additional judges.** All remonstrances upon
4 which an appeal has been taken shall be consolidated and heard and
5 determined within thirty (30) days after the time of the filing of the
6 appeal. The court shall decide the appeal based on the record and
7 evidence before the commission, not by trial de novo. It may by a ~~vote~~
8 ~~of at least a majority of all the elected judges~~ confirm the final action
9 of the commission or sustain the remonstrances. **If the appeal is**
10 **decided in a county that does not contain a consolidated city, the**
11 **vote of at least a majority of all the elected judges is required to**
12 **confirm the final action of the commission or sustain the**
13 **remonstrances.** The judgment of the court is final and conclusive,
14 unless an appeal is taken as in other civil actions. An appeal to the
15 court of appeals or supreme court has priority over all other civil
16 appeals.

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SENATE MOTION

Madam President: I move that Senator Lubbers be added as coauthor of Senate Bill 346.

BRAY

SENATE MOTION

Madam President: I move that Senator Breaux be added as coauthor of Senate Bill 346.

BRAY

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 346, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 346 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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