January 22, 2008

HOUSE BILL No. 1108

DIGEST OF HB 1108 (Updated January 16, 2008 9:31 am - DI 96)

Citations Affected: IC 6-8.1; IC 36-2.

Synopsis: Sheriff's compensation. Provides that the maximum annual compensation for a county sheriff is the sum of: (1) the annual minimum salary that would be paid by the state to a full-time prosecuting attorney in the county; and (2) the amount of any additional annual salary paid by the county from county sources to a full-time prosecuting attorney in the county. Provides that the compensation limit applies to a sheriff elected or reelected to office after November 1, 2010. Requires the sheriff to deposit into the county general fund any tax warrant collection fees that would, if retained by the sheriff, result in the sheriff's annual compensation exceeding the allowed amount. Requires amounts deposited in a county's general fund under this provision to be used to reduce any unfunded liability of a sheriff's pension trust plan established for the county's sheriff's department. Provides that any amounts remaining after applying money to the unfunded liability must be applied to the costs of operating the county's sheriff's department.

Effective: January 1, 2009.

Buell, Niezgodski, Pond

January 8, 2008, read first time and referred to Committee on Labor and Employment.
January 22, 2008, amended, reported — Do Pass.

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January 22, 2008

Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

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HOUSE BILL No. 1108

A BILL FOR 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 6-8.1-8-3, AS AMENDED BY P.L.111-2006, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by

exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. On or before the fifth day of each month, the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

(1) The sheriff shall pay the department the part of the collections that represents taxes, interest, and penalties.

(2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.

(3) Except as provided in ~~subdivision~~ **subdivisions** (4) **and (5),** the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

(4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

(5) If the sheriff has not entered into a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that:

(A) represents the ten percent (10%) collection fee added under section 2(b) of this chapter; and

(B) would, if kept by the sheriff, result in the total amount

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of the sheriff's annual compensation exceeding the maximum amount allowed under IC 36-2-13-17.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. However, if the department determines that:

(1) at the end of this period the sheriff is in the process of collecting the judgment arising from a tax warrant in periodic payments of sufficient size that the judgment will be fully paid within one (1) year after the date the judgment was filed; and

(2) the sheriff's electronic data base regarding tax warrants is compatible with the department's data base;

the sheriff may keep the tax warrant and continue collections.

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

(1) **Subject to subsection (g),** the sheriff may retain ~~for disbursement under subsection (c)~~ forty thousand dollars ($40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar ($40,000) amount.

(2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar ($40,000) amount shall be deposited in the sheriff's department's pension trust fund.

(3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar ($40,000) amount shall be deposited in the county general fund.

(g) If an amount of the collection fee added under section 2(b) of this chapter would, if retained by the sheriff under subsection (f)(1), cause the total amount of the sheriff's annual compensation to exceed the maximum amount allowed under IC 36-2-13-17, the sheriff shall instead deposit the amount in the county general fund.

(h) Money deposited into a county general fund under subsections (c)(5) and (g) must be used as follows:

(1) To reduce any unfunded liability of a sheriff's pension trust plan established for the county's sheriff's department.

(2) Any amounts remaining after complying with subdivision

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(1) must be applied to the costs incurred to operate the county's sheriff's department.

SECTION 2. IC 36-2-13-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2.5. (a) The sheriff, the executive, and the fiscal body may enter into a salary contract for the sheriff.

(b) A sheriff's salary contract must contain the following provisions:

(1) A fixed amount of compensation for the sheriff in place of fee compensation.

(2) Payment of the full amount of the sheriff's compensation from the county general fund in the manner that salaries of other county officials are paid.

(3) Deposit by the sheriff of the sheriff's tax warrant collection fees (as described in IC 6-8.1-8-3) in the county general fund for use for any general fund purpose.

(4) A procedure for financing prisoners' meals that uses one (1) of the following methods:

(A) The county fiscal body shall make an appropriation in the usual manner from the county general fund to the sheriff for feeding prisoners. The sheriff or the sheriff's officers, deputies, or employees may not make a profit from the appropriation. The sheriff shall deposit all meal allowances received under IC 36-8-10-7 in the county general fund for use for any general fund purpose.

(B) The sheriff shall pay for feeding prisoners from meal allowances received under IC 36-8-10-7. The sheriff or the sheriff's officers, deputies, or employees may not make a profit from the meal allowances. After the expenses of feeding prisoners are paid, the sheriff shall deposit any unspent meal allowance money in the county general fund for use for any general fund purpose.

(5) A requirement that the sheriff shall file an accounting of expenditures for feeding prisoners with the county auditor on the first Monday of January and the first Monday of July of each year.

(6) An expiration date that is not later than the date that the term of the sheriff expires.

(7) Other provisions concerning the sheriff's compensation to which the sheriff, the county executive, and the fiscal body agree.

(c) A salary contract is entered under this section when a written document containing the provisions of the contract is:

(1) approved by resolution of both the executive and the fiscal body; and

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(2) signed by the sheriff.

(d) A salary contract entered into under this section before November 1, 2010, with a sheriff who is reelected to office in 2010 is subject to section 17 of this chapter.

SECTION 3. IC 36-2-13-2.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2.8. (a) In place of any other form of compensation, including a salary contract entered into under section 2.5 of this chapter, a county may pay a sheriff's compensation as provided in this section from the county general fund in the manner that salaries of other county officials are paid. ~~However,~~ **Subject to section 17 of this chapter,** the sheriff may retain the sheriff's tax warrant collection fees (as described in IC 6-8.1-8-3).

(b) If a county pays a sheriff's compensation under this section, the county fiscal body shall make an appropriation in the usual manner from the county general fund for feeding prisoners. The sheriff or the sheriff's officers, deputies, or employees may not make a profit from the appropriation.

(c) **Subject to section 17 of this chapter,** a county that pays a sheriff's compensation under this section shall pay the sheriff as follows:

(1) In a county having a population of not more than twenty thousand (20,000), the county must pay the sheriff an annual salary that is equal to at least fifty percent (50%) of the annual minimum salary that would be paid by the state to a full-time prosecuting attorney in the county.

(2) In a county having a population of:

(A) more than twenty thousand (20,000); and

(B) not more than forty thousand (40,000);

the county must pay the sheriff an annual salary that is equal to at least sixty percent (60%) of the annual minimum salary that would be paid by the state to a full-time prosecuting attorney in the county.

(3) In a county having a population of:

(A) more than forty thousand (40,000); and

(B) not more than sixty-five thousand five hundred (65,500);

the county must pay the sheriff an annual salary that is equal to at least seventy percent (70%) of the annual minimum salary that would be paid by the state to a full-time prosecuting attorney in the county.

(4) In a county having a population of:

(A) more than sixty-five thousand five hundred (65,500); and

(B) not more than one hundred thousand (100,000);

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the county must pay the sheriff an annual salary that is equal to at least eighty percent (80%) of the annual minimum salary that would be paid by the state to a full-time prosecuting attorney in the county.

(5) In a county having a population of:

(A) more than one hundred thousand (100,000); and

(B) not more than two hundred thousand (200,000);

the county must pay the sheriff an annual salary that is equal to at least ninety percent (90%) of the annual minimum salary that would be paid by the state to a full-time prosecuting attorney in the county.

(6) In a county having a population of more than two hundred thousand **(200,000),** the county must pay the sheriff an annual salary that is equal to at least one hundred percent (100%) of the annual minimum salary that would be paid by the state to a full-time prosecuting attorney in the county.

SECTION 4. IC 36-2-13-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 17. (a) This section applies to the following:**

(1) A contract entered into under section 2.5 of this chapter with a sheriff who is elected or reelected to office after November 1, 2010.

(2) Any other form of annual compensation provided to a sheriff who is elected or reelected to office after November 1, 2010.

(b) The total amount of a sheriff's annual compensation from:

(1) the county general fund;

(2) any tax warrant collection fees retained by the sheriff under IC 6-8.1-8-3; and

(3) any other public source;

may not exceed the amount determined under subsection (c). For purposes of this subsection, "any other public source" does not include retirement or disability benefits from a federal, a state, or another state's local governmental retirement or disability program, whether the retirement or disability benefit is based on prior employment by the sheriff or another individual, nor does it include worker's compensation benefits paid to the sheriff.

(c) To determine the maximum amount of a sheriff's annual compensation, a county fiscal body shall determine the sum of the following:

(1) The annual minimum salary that would be paid by the

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state to a full-time prosecuting attorney in the county.
(2) The amount of any additional annual salary paid by the county from county sources to a full-time prosecuting attorney in the county.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1108, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, line 32 after "(c)." insert "**For purposes of this subsection, "any other public source" does not include retirement or disability benefits from a federal, a state, or another state's local governmental retirement or disability program, whether the retirement or disability benefit is based on prior employment by the sheriff or another individual, nor does it include worker's compensation benefits paid to the sheriff.**"

and when so amended that said bill do pass.

(Reference is to HB 1108 as introduced.)

NIEZGODSKI, Chair

Committee Vote: yeas 7, nays 4.

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