



January 25, 2008

HOUSE BILL No. 1286

DIGEST OF HB 1286 (Updated January 23, 2008 2:27 pm - DI 103)

Citations Affected: IC 36-12.

Synopsis: Library services authorities. Allows a library services authority to merge with another authority, a nonprofit corporation, or both, to create a nonprofit corporation.

Effective: Upon passage.

Blanton, Austin

January 15, 2008, read first time and referred to Committee on Small Business and Economic Development.
January 24, 2008, amended, reported — Do Pass.

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HB 1286—LS 6971/DI 71+



January 25, 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. 1286

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:

- 1 SECTION 1. IC 36-12-8.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:
4 **Chapter 8.5. Library Services Authorities; Conversion Into**
5 **Nonprofit Corporation**
6 **Sec. 1. The definitions in IC 36-12-8 apply to this chapter.**
7 **Sec. 2. As used in this chapter, "authority" refers to a library**
8 **services authority established under IC 36-12-8.**
9 **Sec. 3. As used in this chapter, "plan" refers to a plan of**
10 **merger.**
11 **Sec. 4. This chapter applies to the following entities:**
12 **(1) An authority.**
13 **(2) A domestic nonprofit corporation that merges with an**
14 **authority under this chapter.**
15 **Sec. 5. An authority may merge with one (1) or more**
16 **authorities, a domestic nonprofit corporation, or both, under this**
17 **chapter to form a domestic nonprofit corporation and gain the**

HB 1286—LS 6971/DI 71+



1 rights, privileges, immunities, and franchises available under
2 IC 23-17.

3 Sec. 6. (a) A merger and conversion into a domestic nonprofit
4 corporation under this chapter must be:

- 5 (1) proposed by the executive committee of an authority by a
- 6 resolution of merger and conversion; and
- 7 (2) adopted by the affirmative vote of not less than sixty-six
- 8 and two-thirds percent (66 2/3%) of the qualified and acting
- 9 voting members of the executive committee physically present
- 10 at a meeting at which a quorum is present.

11 The resolution of merger and conversion required under this
12 subsection must include the plan of merger between the authority
13 and the surviving corporation.

14 (b) A plan must include the following:

- 15 (1) The names of:
 - 16 (A) each entity planning to merge; and
 - 17 (B) the surviving corporation into which the entities plan
 - 18 to merge.
- 19 (2) The terms and conditions of the planned merger and
- 20 conversion.
- 21 (3) The manner and basis, if any, of converting the
- 22 memberships in the authority into memberships in the
- 23 surviving corporation.

24 (c) A plan may include the following:

- 25 (1) Amendments to, or a restatement of, the articles of
- 26 incorporation or bylaws of the surviving corporation.
- 27 (2) Other provisions relating to the planned merger and
- 28 conversion.
- 29 (3) A delayed effective date.

30 (d) In addition to the approval of the executive committee
31 required under subsection (a), a plan must be approved by the
32 following entities to be implemented:

- 33 (1) By the affirmative vote of not less than sixty-six and
- 34 two-thirds percent (66 2/3%) of the qualified and acting
- 35 members of the board of directors of the surviving
- 36 corporation.
- 37 (2) By the affirmative vote of not less than sixty-six and
- 38 two-thirds percent (66 2/3%) of the members of the surviving
- 39 corporation.
- 40 (3) By the affirmative vote of not less than sixty-six and
- 41 two-thirds percent (66 2/3%) of the qualified and acting
- 42 members of the board of directors of the authority present in

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1 person or by proxy at a meeting at which a quorum is present.
 2 (e) If the board of directors of the surviving corporation seeks
 3 to have the plan approved by the members at a membership
 4 meeting, the surviving corporation shall give notice to the
 5 corporation's members of the proposed membership meeting
 6 under IC 23-17-10-5. The notice must state that the purpose of the
 7 meeting is to consider the plan and contain or be accompanied by
 8 a copy or summary of the plan.
 9 (f) If the executive committee of the authority seeks to have the
 10 plan approved by the board of directors at a board of directors
 11 meeting, the authority shall give notice to the members of the
 12 authority's board of the meeting at least thirty (30) days before the
 13 meeting. The notice must state that the purpose of the meeting is to
 14 consider the plan and contain or be accompanied by a copy or
 15 summary of the plan. The copy or summary of the plan for
 16 members of the authority's board of directors must include a copy
 17 or summary of the articles of incorporation and bylaws that will be
 18 in effect after the merger and conversion takes effect.
 19 Sec. 7. (a) After a plan is approved under section 6 of this
 20 chapter, the surviving corporation shall deliver to the secretary of
 21 state articles of merger that include the following information:
 22 (1) The plan.
 23 (2) Regarding the nonsurviving authority:
 24 (A) if the approval of members was not required, a
 25 statement to that effect and a statement that the plan was
 26 approved by a sufficient vote of the board of directions and
 27 the executive committee; or
 28 (B) if the approval of members was required, the
 29 following:
 30 (i) The designation, number of memberships
 31 outstanding, number of votes entitled to be cast by each
 32 class entitled to vote separately on the plan, and the
 33 number of votes of each class undisputedly voting on the
 34 plan.
 35 (ii) Either the total number of votes cast for and against
 36 the plan cast by each class entitled to vote separately on
 37 the plan, or the total number of undisputed votes cast for
 38 the plan by each class and a statement that the number
 39 of votes cast for the plan by each class was sufficient for
 40 approval by that class.
 41 (3) Regarding the surviving corporation:
 42 (A) if the approval of the plan by a person other than the

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board of directors or members is required, a statement that the approval was obtained;

(B) if the approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors; or

(C) if the approval of members was required, the following:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and the number of votes of each class undisputedly voting on the plan.

(ii) Either the total number of votes cast for and against the plan cast by each class entitled to vote separately on the plan, or the total number of undisputed votes cast for the plan by each class and a statement that the number of votes cast for the plan by each class was sufficient for approval by that class.

Sec. 8. (a) When a merger and conversion under this chapter takes effect, the following occur:

(1) An authority party to the merger and conversion merges into the surviving corporation and the separate existence of the authority ceases.

(2) The surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties, restrictions, penalties, and liabilities of a nonprofit corporation organized under IC 23-17.

(3) The surviving corporation does not have the rights, privileges, immunities, and powers, and is not subject to the duties, restrictions, penalties, and liabilities of an authority, including, without limitation, those provided under IC 36-12-8 or IC 36-12-9.

(4) The title to real property and other property owned by each party to the merger is vested in the surviving corporation without reversion or impairment, subject to any conditions to which the property was subject before the merger.

(5) Subject to subdivision (3), the surviving corporation has all liabilities and obligations of each party to the merger.

(6) A proceeding pending against a party to the merger may be continued as if the merger and conversion had not occurred or the surviving corporation may be substituted in

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the proceeding for the party whose existence ceased.
(7) The articles of incorporation and bylaws of the surviving corporation are amended or restated to the extent provided in the plan.

(b) After a merger and conversion takes effect under this chapter, any terms of the plan that are not included in the articles of incorporation are considered to be contract rights only and are not part of the governing document of the corporation.

Sec. 9. A nonprofit corporation organized under IC 23-17 that is a party to a merger with an authority under this chapter shall comply with the applicable requirements of IC 23-17-19 relating to mergers except when inconsistent with this chapter.

Sec. 10. (a) The secretary of state shall approve or disapprove the articles of merger filed under this chapter after first making the examinations or investigations the secretary of state considers necessary to determine if the proposed merger and conversion is lawful.

- (b) If the secretary of state approves the articles of merger:
 - (1) the approval is conclusive proof that the parties to the merger satisfied all conditions precedent to the merger; and
 - (2) the effective date of the merger and conversion is the date of the filing of the articles of merger, unless a delayed effective date is specified in the articles.

Sec. 11. (a) After a merger and conversion under this chapter becomes effective, the surviving corporation resulting from the merger and conversion may file for record with the county recorder of each county in which at the time of the merger and conversion a merging entity owns real property, the title of which will be transferred by the merger and conversion, a file-stamped copy of the articles of merger.

(b) If a plan of merger set forth amendments to the articles of incorporation of the surviving corporation that change the surviving corporation's corporate name, the surviving corporation may file for record with the county recorder of each county in which the surviving corporation owns real property, at the time the merger and conversion becomes effective, a file-stamped copy of the articles of merger.

(c) A failure to record under this section does not affect the validity of the merger and conversion or the change in corporate name.

SECTION 2. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1286, 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 1, line 3, delete "JULY 1, 2008]" and insert "UPON PASSAGE]:".

Page 5, after line 40, begin a new paragraph and insert:

"SECTION 2. **An emergency is declared for this act.**".

and when so amended that said bill do pass.

(Reference is to HB 1286 as introduced.)

ORENTLICHER, Chair

Committee Vote: yeas 9, nays 0.

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