



Reprinted
January 29, 2008

SENATE BILL No. 297

DIGEST OF SB 297 (Updated January 28, 2008 6:31 pm - DI 73)

Citations Affected: IC 6-1.1; IC 14-15; IC 35-45; IC 36-1; IC 36-1.5; IC 36-7.

Synopsis: Local government matters. Allows officers of a political subdivision to transfer money between departments in the same fund of the political subdivision without notice and approval of the department of local government finance if the transfer meets certain requirements. Allows a city, town, or county to regulate and adopt civil penalties for littering on public property. Allows a political subdivision to make transfers to the political subdivision's rainy day fund after the last day of the political subdivision's fiscal year. Provides that a unit consisting of two or more townships and at least one municipality that have reorganized under the government modernization statutes may exercise park and recreation powers if the unit's plan of reorganization authorizes the unit to exercise those powers. Specifies that such a unit may determine: (1) the number of members to be appointed to the unit's park and recreation board; (2) the person or entity that shall appoint or remove those members; (3) any required qualifications for those members; and (4) the terms of those members. Provides that such a unit may exercise planning and zoning power if the unit's plan of reorganization authorizes the unit to do so. Allows the legislative body of such a unit to establish an advisory plan commission and a board of zoning appeals to exercise planning and zoning functions within the unit.

Effective: July 1, 2008.

Delph, Broden, Wyss

January 10, 2008, read first time and referred to Committee on Local Government and Elections.
January 24, 2008, amended, reported favorably — Do Pass.
January 28, 2008, read second time, amended, ordered engrossed.

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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.

SENATE BILL No. 297

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 6-1.1-18-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) The proper
3 officers of a political subdivision may transfer money from one **(1)**
4 major budget classification to another within a department or office **or**
5 **between departments in the same fund of the political subdivision**
6 if:

- 7 (1) they determine that the transfer is necessary;
8 (2) the transfer does not require the expenditure of more money
9 than the total amount set out in the budget as finally determined
10 under this article; and
11 (3) the transfer is made at a regular public meeting and by proper
12 ordinance or resolution.

13 (b) A transfer may be made under this section without notice and
14 without the approval of the department of local government finance.

15 SECTION 2. IC 14-15-2-8 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) As used in this
17 section, "litter" means bottles, glass, crockery, cans, scrap metal, junk,

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1 paper, garbage, rubbish, plastic, or similar refuse.
 2 (b) In the operation or use of watercraft, a person may not throw,
 3 dump, place, deposit, or cause or permit to be thrown, dumped, placed,
 4 or deposited:
 5 (1) any litter, filth, or putrid or unwholesome substance; or
 6 (2) the contents of a water closet or toilet, catch basin, or grease
 7 trap;
 8 in or upon public water or the banks of public water.
 9 (c) **Notwithstanding IC 36-1-3-8(a), a city, town, or county may**
 10 **regulate littering on public property (including the placement and**
 11 **type of containers provided for refuse) as follows:**
 12 (1) **The legislative body (as defined in IC 36-1-2-9) may adopt**
 13 **an ordinance that is at least as restrictive or more restrictive**
 14 **than this section.**
 15 (2) **A park board of a city, town, or county may adopt a**
 16 **regulation that is at least as restrictive or more restrictive**
 17 **than this section with respect to parks and recreation areas**
 18 **within the park board's jurisdiction. A civil penalty for**
 19 **violation of a park board regulation is not enforceable unless**
 20 **the legislative body (as defined in IC 36-1-2-9) of the city,**
 21 **town, or county adopts an ordinance authorizing a penalty for**
 22 **violation of the regulation.**
 23 (3) **A civil penalty for a violation of an ordinance or**
 24 **regulation under this subsection may not exceed:**
 25 (A) **one hundred dollars (\$100) for the first violation;**
 26 (B) **two hundred fifty dollars (\$250) for the second**
 27 **violation; and**
 28 (C) **five hundred dollars (\$500) for any subsequent**
 29 **violation.**
 30 **All civil penalties collected for violations of an ordinance or**
 31 **regulation under this subsection must be deposited in the general**
 32 **fund of the city, town, or county.**
 33 SECTION 3. IC 35-45-3-2, AS AMENDED BY P.L.231-2007,
 34 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2008]: Sec. 2. (a) A person who recklessly, knowingly, or
 36 intentionally places or leaves refuse on property of another person,
 37 except in a container provided for refuse, commits littering, a Class B
 38 infraction. However, the offense is a Class A infraction if the refuse is
 39 placed or left in, on, or within one hundred (100) feet of a body of
 40 water that is under the jurisdiction of the:
 41 (1) department of natural resources; or
 42 (2) United States Army Corps of Engineers.

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1 Notwithstanding IC 34-28-5-4(a), a judgment of not more than one
2 thousand dollars (\$1,000) shall be imposed for each Class A infraction
3 committed under this section.

4 (b) "Refuse" includes solid and semisolid wastes, dead animals, and
5 offal.

6 (c) Evidence that littering was committed from a moving vehicle
7 other than a public conveyance constitutes prima facie evidence that it
8 was committed by the operator of that vehicle.

9 (d) **Notwithstanding IC 36-1-3-8(a), a city, town, or county may**
10 **regulate littering on public property (including the placement and**
11 **type of containers provided for refuse) as follows:**

12 (1) **The legislative body (as defined in IC 36-1-2-9) may adopt**
13 **an ordinance that is at least as restrictive or more restrictive**
14 **than this section.**

15 (2) **A park board of a city, town, or county may adopt a**
16 **regulation that is at least as restrictive or more restrictive**
17 **than this section with respect to parks and recreation areas**
18 **within the park board's jurisdiction. A civil penalty for**
19 **violation of a park board regulation is not enforceable unless**
20 **the legislative body (as defined in IC 36-1-2-9) of the city,**
21 **town, or county adopts an ordinance authorizing a penalty for**
22 **violation of the regulation.**

23 (3) **A civil penalty for a violation of an ordinance or**
24 **regulation under this subsection may not exceed:**

- 25 (A) **one hundred dollars (\$100) for the first violation;**
- 26 (B) **two hundred fifty dollars (\$250) for the second**
- 27 **violation; and**
- 28 (C) **five hundred dollars (\$500) for any subsequent**
- 29 **violation.**

30 **All civil penalties collected for violations of an ordinance or**
31 **regulation under this subsection must be deposited in the general**
32 **fund of the city, town, or county.**

33 SECTION 4. IC 36-1-8-5, AS AMENDED BY P.L.1-2007,
34 SECTION 238, IS AMENDED TO READ AS FOLLOWS
35 [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) This section applies to all
36 funds raised by a general or special tax levy on all the taxable property
37 of a political subdivision.

38 (b) Whenever the purposes of a tax levy have been fulfilled and an
39 unused and unencumbered balance remains in the fund, the fiscal body
40 of the political subdivision shall order the balance of that fund to be
41 transferred as follows, unless a statute provides that it be transferred
42 otherwise:

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- 1 (1) Funds of a county, to the general fund or rainy day fund of the
- 2 county, as provided in section 5.1 of this chapter.
- 3 (2) Funds of a municipality, to the general fund or rainy day fund
- 4 of the municipality, as provided in section 5.1 of this chapter.
- 5 (3) Funds of a township for redemption of township assistance
- 6 obligations, to the township assistance fund of the township or
- 7 rainy day fund of the township, as provided in section 5.1 of this
- 8 chapter.
- 9 (4) Funds of any other political subdivision, to the general fund or
- 10 rainy day fund of the political subdivision, as provided in section
- 11 5.1 of this chapter. However, if the political subdivision is
- 12 dissolved or does not have a general fund or rainy day fund, then
- 13 to the general fund of each of the units located in the political
- 14 subdivision in the same proportion that the assessed valuation of
- 15 the unit bears to the total assessed valuation of the political
- 16 subdivision.
- 17 (c) Whenever an unused and unencumbered balance remains in the
- 18 civil township fund of a township and a current tax levy for the fund is
- 19 not needed, the township fiscal body may order any part of the balance
- 20 of that fund transferred to the debt service fund of the school
- 21 corporation located in or partly in the township. However, if more than
- 22 one (1) school corporation is located in or partly in the township, then
- 23 any sum transferred shall be transferred to the debt service fund of each
- 24 of those school corporations in the same proportion that the part of the
- 25 assessed valuation of the school corporation in the township bears to
- 26 the total assessed valuation of the township.
- 27 (d) If there is:
- 28 (1) an unexpended balance in the debt service fund of any school
- 29 township; and
- 30 (2) no outstanding bonded or other indebtedness of the school
- 31 township to the payment of which the unexpended balance or any
- 32 part of the unexpended balance can be legally applied;
- 33 the township trustee of the township, with the approval of the township
- 34 board, may transfer the unexpended balance in the debt service fund to
- 35 the school general fund of the school township.
- 36 (e) Whenever any township has collected any fund for the special
- 37 or specific purpose of erecting or constructing a school building and
- 38 the township trustee of the township decides to abandon the proposed
- 39 work of erecting or constructing the school building, the township
- 40 trustee of the township shall transfer the fund collected for the special
- 41 or specific purpose to the township fund of the township, upon the
- 42 order of the township board to make the transfer. It is lawful thereafter

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1 to use the funds for any purpose for which the township funds of the
2 township may be used.

3 (f) Transfers to a political subdivision's rainy day fund may be made
4 at any time during the political subdivision's fiscal year: **after the last**
5 **day of the political subdivision's fiscal year.**

6 SECTION 5. IC 36-1.5-4-44 IS ADDED TO THE INDIANA CODE
7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2008]: **Sec. 44. (a) A reorganized political subdivision consisting**
9 **of:**

10 (1) two (2) or more townships; and
11 (2) at least one (1) municipality;
12 that have reorganized under IC 36-1.5 may exercise park and
13 recreation powers under IC 36-10 if the reorganized political
14 subdivision's plan of reorganization authorizes the reorganized
15 political subdivision to exercise those powers.

16 (b) If a reorganized political subdivision's plan of reorganization
17 authorizes the reorganized political subdivision to exercise park
18 and recreation powers under IC 36-10, the reorganized political
19 subdivision may establish a park and recreation board.

20 (c) A park and recreation board established by a reorganized
21 political subdivision under this section:

- 22 (1) shall exercise park and recreation functions within the
23 reorganized political subdivision; and
- 24 (2) has the powers and duties of both a municipal park and
25 recreation board and a township park and recreation board
26 under IC 36-10.

27 (d) A reorganized political subdivision may by resolution or in
28 the reorganized political subdivision's plan of reorganization
29 determine:

- 30 (1) the number of members to be appointed to the reorganized
31 political subdivision's park and recreation board;
- 32 (2) the person or entity that shall appoint or remove those
33 members;
- 34 (3) any required qualifications for those members; and
- 35 (4) the terms of those members.

36 SECTION 6. IC 36-7-2-1 IS AMENDED TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2008]: **Sec. 1. (a) Except as provided in**
38 **subsection (b), this chapter applies to all units except townships.**

39 (b) A unit consisting of:

40 (1) two (2) or more townships; and
41 (2) at least one (1) municipality;
42 that have reorganized under IC 36-1.5 may exercise planning and

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zoning power under IC 36-7-4 if the unit's plan of reorganization under IC 36-1.5 authorizes the unit to exercise planning and zoning powers.

SECTION 7. IC 36-7-4-107 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 107. If a provision of this chapter requires a power to be exercised by adoption of an ordinance, a unit described in IC 36-7-2-1(b) shall exercise the power by adoption of a resolution.

SECTION 8. IC 36-7-4-202.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 202.5. (a) ADVISORY. Notwithstanding any other law, the legislative body of a unit described in IC 36-7-2-1(b) may establish by resolution an advisory plan commission.

(b) ADVISORY. If an advisory plan commission is established under this section by a unit described in IC 36-7-2-1(b) and the unit adopts a comprehensive plan under this chapter:

- (1) the plan commission of the unit shall exercise the planning and zoning functions within the unit;**
- (2) the plan commission unit may not exercise planning and zoning functions within a municipality that has established a plan commission under this chapter (other than a municipality that participated in the reorganization of the unit under IC 36-1.5);**
- (3) a county plan commission may not exercise planning and zoning functions within the unit; and**
- (4) except as provided in subdivision (2), a municipal plan commission of a municipality (other than a municipality that participated in the reorganization of the unit under IC 36-1.5) may not exercise planning and zoning functions within the unit.**

Notwithstanding any other law, if a municipality (other than a municipality that participated in the reorganization of the unit under IC 36-1.5) annexes territory within a unit described in IC 36-7-2-1(b) after the unit has established an advisory plan commission under this section, the municipal plan commission of that municipality may not exercise planning and zoning functions within that annexed territory.

(c) ADVISORY. Except as specifically provided in this chapter, an advisory plan commission established under this section by a unit described in IC 36-7-2-1(b) shall exercise the planning and zoning functions within the unit in the same manner that a

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1 municipal plan commission established under this chapter
 2 exercises planning and zoning functions for a municipality.

3 (d) **ADVISORY.** Notwithstanding any other provision, if an
 4 advisory plan commission is established under this section by a unit
 5 described in IC 36-7-2-1(b), the legislative body of the unit shall by
 6 resolution or in the unit's plan of reorganization under IC 36-1.5
 7 determine:

- 8 (1) the number of members to be appointed to the unit's
 9 advisory plan commission;
- 10 (2) the person or entity that shall appoint or remove those
 11 members;
- 12 (3) any required qualifications for those members;
- 13 (4) the terms of those members; and
- 14 (5) whether any members or advisory members shall be
 15 appointed by the county in which the unit is located or by a
 16 municipality located within the unit.

17 SECTION 9. IC 36-7-4-901.5 IS ADDED TO THE INDIANA
 18 CODE AS A NEW SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2008]: Sec. 901.5. (a) If an advisory plan
 20 commission is established under this section by a unit described in
 21 IC 36-7-2-1(b) and the unit adopts a comprehensive plan under this
 22 chapter, the legislative body of the unit shall establish a board of
 23 zoning appeals.

24 (b) A board of zoning appeals established under this section:

- 25 (1) shall exercise its powers and duties under this chapter
 26 within the unit in the same manner that a municipal board of
 27 zoning appeals established under this chapter exercises
 28 powers and duties under this chapter for a municipality; and
- 29 (2) may not exercise its powers and duties under this chapter
 30 within a municipality that has established a plan commission
 31 under this chapter (other than a municipality that
 32 participated in the reorganization of the unit under
 33 IC 36-1.5).

34 (c) Notwithstanding any other law, if the legislative body of a
 35 unit described in IC 36-7-2-1(b) establishes a board of zoning
 36 appeals under this section, the legislative body of the unit shall by
 37 resolution determine:

- 38 (1) the number of members to be appointed to the unit's board
 39 of zoning appeals;
- 40 (2) the person or entity that shall appoint or remove those
 41 members;
- 42 (3) any required qualifications for those members; and

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1 **(4) the terms of those members.**

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SENATE MOTION

Madam President: I move that Senators Broden and Wyss be added as coauthors of Senate Bill 297.

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COMMITTEE REPORT

Madam President: The Senate Committee on Local Government and Elections, to which was referred Senate Bill No. 297, 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 5, line 5, delete "and before March 1 of" and insert ".".

Page 5, delete line 6.

and when so amended that said bill do pass.

(Reference is to SB 297 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 10, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 297 be amended to read as follows:

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

"SECTION 5. IC 36-1.5-4-44 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 44. (a) A reorganized political subdivision consisting of:**

(1) two (2) or more townships; and

(2) at least one (1) municipality;

that have reorganized under IC 36-1.5 may exercise park and recreation powers under IC 36-10 if the reorganized political subdivision's plan of reorganization authorizes the reorganized political subdivision to exercise those powers.

(b) If a reorganized political subdivision's plan of reorganization authorizes the reorganized political subdivision to exercise park

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and recreation powers under IC 36-10, the reorganized political subdivision may establish a park and recreation board.

(c) A park and recreation board established by a reorganized political subdivision under this section:

- (1) shall exercise park and recreation functions within the reorganized political subdivision; and
- (2) has the powers and duties of both a municipal park and recreation board and a township park and recreation board under IC 36-10.

(d) A reorganized political subdivision may by resolution or in the reorganized political subdivision's plan of reorganization determine:

- (1) the number of members to be appointed to the reorganized political subdivision's park and recreation board;
- (2) the person or entity that shall appoint or remove those members;
- (3) any required qualifications for those members; and
- (4) the terms of those members.

SECTION 6. IC 36-7-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to all units except townships.

(b) A unit consisting of:

- (1) two (2) or more townships; and
- (2) at least one (1) municipality;

that have reorganized under IC 36-1.5 may exercise planning and zoning power under IC 36-7-4 if the unit's plan of reorganization under IC 36-1.5 authorizes the unit to exercise planning and zoning powers.

SECTION 7. IC 36-7-4-107 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 107. If a provision of this chapter requires a power to be exercised by adoption of an ordinance, a unit described in IC 36-7-2-1(b) shall exercise the power by adoption of a resolution.

SECTION 8. IC 36-7-4-202.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 202.5. (a) ADVISORY. Notwithstanding any other law, the legislative body of a unit described in IC 36-7-2-1(b) may establish by resolution an advisory plan commission.

(b) ADVISORY. If an advisory plan commission is established under this section by a unit described in IC 36-7-2-1(b) and the unit adopts a comprehensive plan under this chapter:

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- (1) the plan commission of the unit shall exercise the planning and zoning functions within the unit;
- (2) the plan commission unit may not exercise planning and zoning functions within a municipality that has established a plan commission under this chapter (other than a municipality that participated in the reorganization of the unit under IC 36-1.5);
- (3) a county plan commission may not exercise planning and zoning functions within the unit; and
- (4) except as provided in subdivision (2), a municipal plan commission of a municipality (other than a municipality that participated in the reorganization of the unit under IC 36-1.5) may not exercise planning and zoning functions within the unit.

Notwithstanding any other law, if a municipality (other than a municipality that participated in the reorganization of the unit under IC 36-1.5) annexes territory within a unit described in IC 36-7-2-1(b) after the unit has established an advisory plan commission under this section, the municipal plan commission of that municipality may not exercise planning and zoning functions within that annexed territory.

(c) **ADVISORY.** Except as specifically provided in this chapter, an advisory plan commission established under this section by a unit described in IC 36-7-2-1(b) shall exercise the planning and zoning functions within the unit in the same manner that a municipal plan commission established under this chapter exercises planning and zoning functions for a municipality.

(d) **ADVISORY.** Notwithstanding any other provision, if an advisory plan commission is established under this section by a unit described in IC 36-7-2-1(b), the legislative body of the unit shall by resolution or in the unit's plan of reorganization under IC 36-1.5 determine:

- (1) the number of members to be appointed to the unit's advisory plan commission;
- (2) the person or entity that shall appoint or remove those members;
- (3) any required qualifications for those members;
- (4) the terms of those members; and
- (5) whether any members or advisory members shall be appointed by the county in which the unit is located or by a municipality located within the unit.

SECTION 9. IC 36-7-4-901.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 901.5. (a) If an advisory plan commission is established under this section by a unit described in IC 36-7-2-1(b) and the unit adopts a comprehensive plan under this chapter, the legislative body of the unit shall establish a board of zoning appeals.**

- (b) A board of zoning appeals established under this section:**
 - (1) shall exercise its powers and duties under this chapter within the unit in the same manner that a municipal board of zoning appeals established under this chapter exercises powers and duties under this chapter for a municipality; and**
 - (2) may not exercise its powers and duties under this chapter within a municipality that has established a plan commission under this chapter (other than a municipality that participated in the reorganization of the unit under IC 36-1.5).**

(c) Notwithstanding any other law, if the legislative body of a unit described in IC 36-7-2-1(b) establishes a board of zoning appeals under this section, the legislative body of the unit shall by resolution determine:

- (1) the number of members to be appointed to the unit's board of zoning appeals;**
- (2) the person or entity that shall appoint or remove those members;**
- (3) any required qualifications for those members; and**
- (4) the terms of those members."**

Renumber all SECTIONS consecutively.

(Reference is to SB 297 as printed January 25, 2008.)

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