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FISCAL IMPACT STATEMENT

LS 7536

BILL NUMBER: HB 1358

NOTE PREPARED: May 2, 2009

BILL AMENDED: Apr 29, 2009

SUBJECT: Local Government.

FIRST AUTHOR: Rep. Sullivan

FIRST SPONSOR: Sen. Miller

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: *Vacant or Abandoned Property:*

a. *Prohibition of Certain Persons at a Tax Sale:* The bill applies restrictions on purchasing real property at a tax sale to a person who owns a fee interest, a life estate interest, or the equitable interest of a contract purchaser in a vacant or abandoned structure subject to an enforcement order concerning a nuisance or an unsafe building.

b. *Penalty for Unlawful Entry:* The bill provides that a person not having a contractual interest in a vacant or abandoned property commits criminal trespass if: (1) a law enforcement officer who has a reasonable suspicion that criminal activity has occurred or is occurring prohibits the person from entering or asks the person to leave the property; and (2) the person knowingly or intentionally enters or refuses to leave the property. It provides that a person commits criminal trespass if the person knowingly or intentionally enters a vacant or abandoned property subject to an abatement order after being denied entry by a court order issued to the person or issued to the general public by posting on or around the premises.

c. *Municipal Civil Action:* The bill also adds provisions regarding abatement of vacant and abandoned structures that a municipality or county may adopt by ordinance. It provides that an owner of a vacant structure or an abandoned structure may be liable for civil penalties if the owner fails to act to change the status of the property as vacant or abandoned.

Continuous Enforcement Order: The bill defines a "continuous enforcement order" as an order that: (1) is issued for compliance or abatement and remains in full force and effect without further compliance and abatement authority orders for the same or similar violations; (2) authorizes specific ongoing compliance and enforcement activities if a property requires reinspection or additional periodic abatement; (3) can be

enforced without additional notice or hearing; and (4) authorizes the enforcement authority to assess and collect ongoing costs for continuous enforcement order activities from any party that is subject to the enforcement authority's order. It allows a municipal corporation to enforce a continuous enforcement order requiring compliance with an ordinance without issuing additional notice. In a civil proceeding to enforce an ordinance of a municipal corporation, it allows a court to: (1) issue a continuous enforcement order; (2) order the suspension or revocation of a license; and (3) order demolition of a structure. It directs a hearing authority under the unsafe building law that affirms or modifies an order to issue a continuous enforcement order. It provides that if a second or subsequent civil judgment is entered against a property owner (relating to the same or a different property) a court may order the owner to pay treble damages based on the costs of the ordered action.

Indianapolis Historic Preservation Commission: The bill requires the mayor to appoint five members and the city-county council to appoint four members of the Indianapolis Historic Preservation Commission. (Current law requires the mayor to appoint all nine members.)

The bill requires the city-county council to appoint one member who is a resident of a historic district. (Current law requires the mayor to appoint at least one member who is a resident of a historic district.)

It allows the city-county council to appoint one member and the mayor to appoint two members from lists of names submitted by the Historic Landmarks Foundation of Indiana and the Historical Society of Marion County. It allows the mayor to appoint one member who is a member of the metropolitan development commission.

It allows the mayor and the city-county council to each appoint a member from a list of names submitted by the local chapter of the American Institute of Architects. (Current law provides that the mayor makes the discretionary appointments.)

It provides that a member appointed before July 1, 2009, continues to serve as a member of the commission after June 30, 2009, until the member's term expires or the executive removes the member for cause.

The bill also provides that if the executive removes the member for cause, the executive shall appoint a successor to serve for the remainder of the vacated term.

Funding of Local Government Projects: The bill amends the provisions authorizing political subdivisions to borrow the money necessary to finance a public work project from a financial institution to allow political subdivisions to also borrow to finance an eligible efficiency project that costs not more than \$3,000,000.

It defines "eligible efficiency project" as a project that is necessary or useful to: (1) carrying out an interlocal cooperation agreement entered into by two or more political subdivisions or governmental entities; or (2) the consolidation of local government services. It authorizes a municipality to borrow money from a municipally owned utility to carry out an eligible efficiency project within the municipality.

The bill also provides that property tax proceeds allocated under tax increment financing may be used to carry out an eligible efficiency project only if those property tax proceeds are in excess of the amount necessary to make certain other payments (including payments of principal and interest on bonds and other obligations, payments of premiums on the redemption before maturity of bonds, and payments on leases).

Effective Date: July 1, 2009.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: *Indianapolis Historic Preservation Commission:* Members of the Historic Preservation Commission receive no salary, but are entitled to reimbursement for any expenses incurred in the performance of their duties. Local expenditures could change if travel expenditures change due to a change in membership. The budget of the commission and its staff constitutes a part of the consolidated city budget, and the county comprises the taxing district for the commission.

Funding of Local Government Projects: The bill would encourage local government consolidation and efficiency. The bill would allow a local unit to borrow up to \$3 M to finance a project that might be necessary to implement an inter-local agreement or a consolidation plan. The impact would depend on the number of local eligible efficiency projects with borrowing limited to \$3 M for up to six years. The annual cost of a \$3 M project financed over six years at 5% interest would be about \$591,000. The potential savings from the inter-local agreement or consolidation would probably be greater than the \$3 M needed to facilitate agreement or consolidation. The net savings to locals is unknown.

Explanation of Local Revenues: *Vacant and Abandoned Property- Summary:* This bill strengthens the authority of counties and municipalities in monitoring vacant and abandoned properties. It prohibits an individual who owns a vacant or abandoned structure that is in violation of health or building codes or has been cited as a drug nuisance or an indecent nuisance from purchasing the property at a tax sale. Additionally, the bill gives municipalities and counties the authority to impose fines and continuously monitor how the owners of these properties are managing them. This would probably result in a reduction of vacant and abandoned properties and a subsequent increase in revenue as these properties are developed and added to the tax base.

a. *Prohibition of Certain Persons at a Tax Sale:* Under current law, an individual who owns a fee interest, a life estate interest, or the equitable interest of a contract purchaser in a building that is in violation of building or health codes in the county in which a tax sale is held is prohibited from purchasing tracts offered for sale (the individual may bid on a tract that the individual owns). This proposal extends the purchasing limitation to vacant or abandoned structures that are in violation of health or building codes or have been cited as a drug nuisance or an indecent (i.e., prostitution) nuisance.

b. *Penalty for Unlawful Entry:* Under current law an individual who intentionally violates the property of another commits a Class A misdemeanor or Class D felony depending on the type of property. This bill extends the current statute to include entry into abandoned or vacant properties that are in violation of health or building codes or have been cited as a drug nuisance or an indecent nuisance. It also extends the current statute to include violation of a key facility or a facility belonging to a public utility. It stipulates that a person not having a contractual interest in a vacant or abandoned property commits a Class A misdemeanor if: (1) a law enforcement officer, who has a reasonable suspicion that criminal activity has occurred or is occurring, prohibits the person from entering or asks the person to leave the property; and (2) the person knowingly or intentionally enters or refuses to leave the property. It also provides that a person commits criminal trespass if the person knowingly or intentionally enters a vacant or abandoned property after being denied entry by a court order issued to the person or issued to the general public.

The offense becomes a Class D felony if committed on a key facility or a facility belonging to a public utility (e.g., a municipally owned utility, a cooperatively owned utility, two or more municipalities that have

combined to provide electric power, a municipal sanitation department, or a sanitary district).

c. Municipal Civil Action: The bill defines what abandoned and vacant structures are, and it authorizes a legislative body of a municipality or county to adopt an ordinance to administer the clauses in this bill governing abandoned and vacant structures. It specifies that the owner of property that remains vacant or abandoned for at least 90 consecutive calendar days may be liable for a civil penalty in the amount of \$500 per vacant or abandoned structure, not to exceed \$5,000 a year. The penalties would be waived if the owner provides and the enforcement authority accepts documented proof that the owner intends to take steps to ensure that the property would not be vacant or abandoned, and that the owner is current on all property taxes and special assessments.

If the structure continues to be vacant or abandoned beyond the initial 90 days, the enforcement authority is authorized to continue to assess additional penalties: \$1,000 per structure for the second 90 days the structure remains vacant or abandoned; \$1,500 per structure for the third 90 days; and \$2,000 for the fourth and each subsequent 90 days that the structure remains vacant or abandoned. The total fine should not exceed \$5,000 per structure per year.

Under the unsafe building statute, the enforcement is authorized to demolish and remove part or all of an unsafe building. Under current law, only the removal was authorized.

Continuous Enforcement Order: Under current law, a municipal corporation can file a civil action against a person who violates a building code. Sanctions include issuing an injunction, entering a judgment, ordering an inspection, imposing a fine, imposing court costs and fees, and ordering the defendant or the municipal corporation to take corrective action to bring the property into compliance.

This bill extends the authority of the municipal corporation to impose sanctions. It authorizes the municipal authority to revoke or suspend a license and to order that a structure not in compliance with building codes to be demolished. Additionally, it allows a court to grant the municipal corporation a continuous enforcement order (enforcement order) that once granted remains in full force on a property without the corporation having to return to court to seek further enforcement authority or additional sanctions for the same or similar violations. The enforcement order also authorizes the corporation to perform specific, ongoing compliance and enforcement activities if the property has to be reinspected. The corporation can assess any fees and costs without the need for additional notice or hearing, and can assess and collect ongoing costs associated with implementing the enforcement order.

Under this bill, if a hearing authority under the unsafe building law affirms or modifies an order of the enforcement authority, the hearing authority shall also issue a continuous enforcement order. Additionally, the bill provides that if a second or subsequent civil judgment is entered against a property owner (relating to the same or a different property), a court may order the owner to pay treble damages based on the costs of the ordered action.

State Agencies Affected:

Local Agencies Affected: County auditors, county executives, taxing units.

Information Sources: Cindy Land, City of Indianapolis; Marion County and the Indianapolis Historic Preservation Commission.

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