



Reprinted
February 2, 2010

HOUSE BILL No. 1367

DIGEST OF HB 1367 (Updated February 1, 2010 4:39 pm - DI 51)

Citations Affected: IC 6-3.1; IC 20-24; IC 20-40; IC 20-42.5; IC 20-43; IC 20-51; noncode.

Synopsis: Education matters. Delays the implementation of the school scholarship tax credit and virtual charter school pilot program. Permits up to 5% of the balance of a school capital projects fund to be used to pay any expenditure that can be paid from the school's general fund. Requires each school corporation to establish and carry out a plan to preserve and protect instructional programs. Directs school corporations to use of cash balances, reduce non-instructional expenditures, and suspend nonessential testing programs as part of the plan. Establishes the instructional services restoration grant program to provide additional funds to school corporations to preserve and protect instructional programs. Makes an appropriation. Repeals a noncode provision indicating that the school scholarship tax credit program applies to taxable years beginning after December 31, 2009.

Effective: Upon passage; January 1, 2010 (retroactive).

Porter, Cheatham

January 13, 2010, read first time and referred to Committee on Rules and Legislative Procedures.

January 14, 2010, reassigned to Committee on Education.

January 25, 2010, amended, reported — Do Pass.

February 1, 2010, read second time, amended, ordered engrossed.

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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1367

A BILL FOR AN ACT to amend the Indiana Code concerning education and to make an appropriation.

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

1 SECTION 1. IC 6-3.1-30.5-0.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)]: **Sec. 0.5. This**
4 **chapter applies only to taxable years beginning after December 31,**
5 **2011.**

6 SECTION 2. IC 20-24-7-13, AS ADDED BY P.L.182-2009(ss),
7 SECTION 315, IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) As used in this section,
9 "**current ADM**" has the meaning set forth in **IC 20-43-1-10** and
10 "virtual charter school" means any charter school, including a
11 conversion charter school, that provides for the delivery of more than
12 fifty percent (50%) of instruction to students through:

- 13 (1) virtual distance learning;
14 (2) online technologies; or
15 (3) computer based instruction.
16 (b) The department shall establish a pilot program to provide
17 funding for a statewide total of up to two hundred (200) students who



1 attend virtual charter schools in the school year ending in ~~2010~~ **2013**
 2 and five hundred (500) students who attend virtual charter schools in
 3 the school year ending in ~~2011~~ **2014**. The department shall choose an
 4 entity or entities to operate the virtual charter school. The pilot program
 5 must focus on children who have medical disabilities or circumstances
 6 that prevent them from attending school or for whom a virtual charter
 7 school is a better alternative than a traditional school. At least
 8 seventy-five percent (75%) of the students enrolled in virtual charter
 9 schools under this section must have been included in the ADM count
 10 for the previous school year.

11 (c) **After June 30, 2012**, a virtual charter school is entitled to
 12 receive funding from the state in an amount equal to the product of:

13 (1) the number of students included in the virtual charter school's
 14 **current** ADM who are participating in the pilot program;
 15 multiplied by

16 (2) eighty percent (80%) of the statewide average basic tuition
 17 support.

18 **A virtual charter school is not entitled to receive funding under this**
 19 **section, IC 20-43, or another law in the last six (6) months of 2010,**
 20 **in any month in 2011, or in the first six (6) months of 2012. The**
 21 **amount to which a virtual charter school is entitled in 2010 is equal**
 22 **to fifty percent (50%) of the amount determined under**
 23 **subdivisions (1) and (2) for 2010. One hundred percent (100%) of**
 24 **this amount shall be distributed to virtual charter schools before**
 25 **June 30, 2010. A virtual charter school is entitled to receive**
 26 **funding under this section in 2012 only for the last six (6) months**
 27 **of the calendar year if the virtual charter school participates in the**
 28 **pilot program established under this section for the last six (6)**
 29 **months of 2012 and the current ADM of the virtual charter school**
 30 **in 2012 is greater than zero (0). The amount to which a virtual**
 31 **charter school is entitled in 2012 is equal to fifty percent (50%) of**
 32 **the amount determined under subdivisions (1) and (2) for 2012.**
 33 **One hundred percent (100%) of this amount shall be distributed to**
 34 **virtual charter schools after June 30, 2012, and before January 1,**
 35 **2013.**

36 (d) The department shall adopt rules under IC 4-22-2 to govern the
 37 operation of virtual charter schools.

38 (e) ~~Beginning~~ **In 2009 and in 2011 and each year thereafter**, the
 39 department shall before December 1 of ~~each~~ **the** year submit an annual
 40 report to the state budget committee concerning the program under this
 41 section.

42 (f) **Notwithstanding this section, a pilot program established**

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1 under this section for a school year beginning after June 30, 2010,
2 and ending before July 1, 2012, is suspended. However, the
3 department shall conduct a fall count of the number of students
4 enrolled in a virtual charter school in the school year ending on
5 June 30, 2012, to determine the current ADM of the virtual charter
6 school for 2012.

7 SECTION 3. IC 20-40-8-22 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
9 UPON PASSAGE]: Sec. 22. (a) Money in the fund may be used for
10 any expenditure payable from the school corporation's general
11 fund, including utility services and property or casualty insurance
12 costs not paid from a levy imposed under IC 20-46-6-6.

13 (b) A school corporation's expenditures under this section may
14 not exceed in any calendar year five percent (5%) of the sum of:

15 (1) the unencumbered balance in the fund on January 1 of the
16 calendar year; and

17 (2) the deposits in the fund in the calendar year;
18 derived from the capital projects fund property tax levy imposed
19 under IC 20-46-6-5.

20 (c) This section expires January 1, 2012.

21 SECTION 4. IC 20-42.5-4 IS ADDED TO THE INDIANA CODE
22 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
23 UPON PASSAGE]:

24 **Chapter 4. Emergency Measures to Maintain Instruction and**
25 **Learning Programs**

26 **Sec. 1. As used in this section, "filing date" refers to the later of**
27 **March 31, 2010, or the date that is thirty (30) days after the act in**
28 **which this chapter is initially added becomes law under Section 14**
29 **of Article 5 of the Constitution of the State of Indiana after**
30 **enactment in the 2010 session of the general assembly.**

31 **Sec. 2. As used in this chapter, "fund" refers to the instructional**
32 **services restoration fund established by section 8 of this chapter.**

33 **Sec. 3. A school corporation shall take the actions necessary and**
34 **desirable to preserve and protect instructional programs, including**
35 **class sizes, curriculum or program offerings, and certificated**
36 **employee positions and teaching assistants.**

37 **Sec. 4. (a) A school corporation shall carry out section 3 of this**
38 **chapter according to a plan adopted by the governing body of the**
39 **school corporation. The plan must be adopted by resolution.**

40 **(b) The plan must establish the steps that the school corporation**
41 **will take and the schedule on which the actions will be taken to**
42 **carry out section 3 of this chapter. The plan, including an amended**

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plan, must include at least the following determinations:

(1) An evaluation of the cash balances that the school corporation must maintain in 2010 and 2011 to carry out its governmental functions.

(2) An estimate of the additional resources needed to carry out section 3 of this chapter.

(3) A determination of whether the school corporation has maintained or will maintain on the last day of any month in 2010 or 2011:

(A) an unexpended and unencumbered general fund cash balance exceeding eight percent (8%) of the amount appropriated from the school corporation's general fund for the 2010 calendar year; or

(B) an unexpended and unencumbered rainy day fund balance exceeding fifty percent (50%) of the school corporation's rainy day fund balance on January 1, 2010;

(4) A record showing that if the governing body determines that either of the balances described in subdivision (3)(A) or (3)(B) exist or will exist, the governing body has conducted a public hearing and vote on the balances in the school corporation's general fund and rainy day fund to determine whether any part of those balances should be used to carry out section 3 of this chapter.

(5) If the governing body votes against using any part of any balance described in subdivision (3), the governing body must include findings that demonstrate the circumstances that require a balance exceeding the percentage specified in subdivision (3) to be maintained.

(6) A description of steps that will be taken under IC 20-40-8-22 to transfer money from the capital projects fund for the purposes of section 3 of this chapter.

(7) A detailed listing of all expenditure reductions required under section 5 of this chapter and the amount that will be devoted to the purposes of section 3 of this chapter.

(8) A detailed listing of all expenditure reductions required under section 6 of this chapter and the amount that will be devoted to the purposes of section 3 of this chapter.

(9) A description of all other steps that will be taken to carry out section 3 of this chapter and the amount that will be devoted to the purposes of section 3 of this chapter.

Sec. 5. (a) To the extent needed to carry out section 3 of this chapter, a school corporation shall reduce nonessential testing

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1 expenditures and expenditures classified in each category set forth
2 in IC 20-42.5-3-4(a)(3) and IC 20-42.5-3-4(a)(4) by at least:

- 3 (1) five percent (5%) for the school year beginning July 1,
- 4 2010, and ending June 30, 2011; and
- 5 (2) ten percent (10%) for the school year beginning July 1,
- 6 2011, and ending June 30, 2012.

7 (b) Notwithstanding any other law, if any of the expenditures
8 that were reduced or eliminated under subsection (a) would have
9 been payable from a fund other than the general fund or the
10 transportation fund, the school corporation may transfer the
11 amount of the savings from that fund to the general fund to carry
12 out section 3 of this chapter. A transfer permitted under this
13 subsection is in addition to any transfer permitted under
14 IC 20-40-8-22.

15 (d) A school corporation shall comply with a plan adopted
16 under subsection (b) or (c).

17 Sec. 6. To the extent needed to carry out section 3 of this
18 chapter, a school corporation shall reduce its expenditures for
19 nonessential testing programs that are not required by federal law
20 or an agency of the federal government during the period
21 beginning July 1, 2010, and ending June 30, 2012, and use the
22 money saved from the reduction in testing expenditures. The tests
23 that may be suspended under this section include the following:

- 24 (1) Kindergarten through grade 2 diagnostics.
- 25 (2) Grade 3 through 8 acuity tests.
- 26 (3) CORE 40 end of course assessments.
- 27 (4) PSAT testing, to the extent that the school corporation's
- 28 expenditures for PSAT testing are not otherwise paid from
- 29 PSAT program grants distributed by the state.
- 30 (5) ISTEP social studies testing.

31 The state board and the department shall amend its rules and
32 policies as necessary to permit a school corporation to carry out
33 this section and to give guidance on the identification of
34 nonessential testing expenditures that are not listed in subdivisions
35 (1) through (6).

36 Sec. 7. (a) Not later than the filing date, the department, after
37 consultation with the department of state revenue and the budget
38 agency, shall submit a report to the executive director of the
39 legislative services agency in an electronic format under IC 5-14-6,
40 the budget agency, and the auditor of state specifying the
41 following:

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(A) amount of administrative expenditures that otherwise would have been incurred by the department or another agency of the state in each state fiscal year; and

(B) amount of state tuition support that would have been distributed to virtual charter schools in each state fiscal year;

during the period beginning July 1, 2010, and ending December 31, 2011, if the virtual school pilot program were not suspended under IC 20-24-7-13. The maximum state distribution under IC 20-43-2-2 for calendar years 2010 and 2011 is reduced by the amount attributable to distributions described in clause (B) for that calendar year.

(2) The:

(A) amount of administrative expenditures that otherwise would have been incurred by the department or another agency of the state in the administration of IC 6-3.1-30.5 or IC 20-51 in the period beginning April 1, 2010, and ending December 31, 2011; and

(B) amount of tax revenue that otherwise would have been lost to the state from the granting of school scholarship tax credits granted under 6-3.1-30.5 against adjusted gross income imposed in taxable years ending not later than December 31, 2011, including amounts that the department of state revenue estimates would have lost from tax returns filed or amended after December 31, 2011;

if the school scholarship tax credit program were not suspended under IC 6-3.1-30.5-0.5 and the school scholarship program were not suspended under IC 20-51-3-2.

(b) The department shall make the estimates required under subsection (a) based on the best information available to the department at the time the estimates are made.

Sec. 8. (a) The instructional services restoration fund is established. The budget agency shall administer the fund.

(b) Not later than the first regular business day after June 30, 2010, the auditor of state shall transfer from the state general fund to the fund an amount equal to the sum of the following:

(1) The amounts determined under section 7 of this chapter.

(2) The five hundred thousand dollars (\$500,000) that P.L.182-2009(ss), SECTION 9 directed the department to use for ACT/SAT test preparation in the state fiscal year beginning July 1, 2010, and ending June 30, 2011. The appropriation in P.L.182-2009(ss), SECTION 9 for the state

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1 fiscal year beginning July 1, 2010, and ending June 30, 2011,
 2 for testing and remediation is reduced by the amount
 3 transferred under this subdivision. The requirement that the
 4 department use money from this appropriation in the state
 5 fiscal year beginning July 1, 2010, and ending June 30, 2011,
 6 for ACT/SAT test preparation is terminated.

7 (3) The seven hundred seventeen thousand four hundred
 8 forty-nine dollars (\$717,449) that P.L.182-2009(ss), SECTION
 9 9 appropriated for other operating expenses of the PSAT
 10 Program for the state fiscal year beginning July 1, 2010, and
 11 ending June 30, 2011. The appropriation for the PSAT
 12 Program for the state fiscal year beginning July 1, 2010, and
 13 ending June 30, 2011, is terminated.

14 (c) Money in the fund shall be used for the purposes of
 15 instructional services restoration grants under section 9 of this
 16 chapter.

17 (d) The treasurer of state shall invest the money in the fund not
 18 currently needed to meet the obligations of the fund in the same
 19 manner as other public funds may be invested.

20 (e) Money in the fund at the end of a state fiscal year does not
 21 revert to the state general fund but remains in the fund to be used
 22 exclusively for purposes of this chapter.

23 (f) The amount required to be transferred under subsection (b)
 24 is appropriated to the auditor of state from the state general fund
 25 for the state fiscal year beginning July 1, 2010, and ending June 30,
 26 2011. Money in the fund is appropriated from the fund to the
 27 department for the purposes of instructional services restoration
 28 grants under section 9 of this chapter, beginning July 1, 2010, and
 29 ending June 30, 2011.

30 Sec. 9. The department shall establish an instructional services
 31 restoration grant program. The purpose of the program is to
 32 provide grants in the state fiscal year beginning July 1, 2010, and
 33 ending June 30, 2011, to school corporations to carry out section 3
 34 of this chapter. In awarding grants, the department shall give
 35 priority to school corporations that demonstrate from a plan or
 36 amended plan submitted under section 4 of this chapter that, after
 37 taking the actions described in section 4(b) of this chapter, the
 38 school corporation will have insufficient funds to carry out section
 39 3 of this chapter. The department shall determine the amount to be
 40 awarded to each school corporation.

41 Sec. 10. The state board may require a school corporation to
 42 provide interim quarterly reports or annual reports summarizing

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the actions taken under this chapter.

Sec. 11. This chapter expires July 1, 2011.

SECTION 5. IC 20-43-6-3, AS AMENDED BY P.L.182-2009(ss), SECTION 339, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A school corporation's basic tuition support for a year is the amount determined under the applicable provision of this section.

(b) This subsection applies to a school corporation that has transition to foundation revenue per adjusted ADM for a year that is not equal to the foundation amount for the year. The school corporation's basic tuition support for a year is equal to the school corporation's transition to foundation revenue for the year.

(c) This subsection applies to a school corporation that has transition to foundation revenue per adjusted ADM for a year that is equal to the foundation amount for the year. The school corporation's basic tuition support for a year is the sum of the following:

- (1) The foundation amount for the year multiplied by the school corporation's adjusted ADM.
- (2) The amount of the annual decrease in federal aid to impacted areas from the year preceding the ensuing calendar year by three
- (3) years to the year preceding the ensuing calendar year by two
- (2) years.

(d) This subsection applies to students of a virtual charter school who are participating in the pilot program under IC 20-24-7-13. A virtual charter school's basic tuition support for a year for those students is the amount determined under IC 20-24-7-13. **A virtual charter school is not entitled to any other funding under this article.**

SECTION 6. IC 20-51-3-2, AS ADDED BY P.L.182-2009(ss), SECTION 364, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The department shall certify all programs that meet the qualifications under section 1 of this chapter as school scholarship programs. **The certification program under this article is suspended until July 1, 2011. After June 30, 2011, the department may certify programs for the purpose of permitting taxpayers to receive school scholarship tax credits under IC 6-3.1-30.5 in a taxable year beginning after December 31, 2011.**

SECTION 7. P.L.182-2009(ss), SECTION 488 IS REPEALED [EFFECTIVE JANUARY 1, 2010 (RETROACTIVE)].

SECTION 8. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1367, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning education and to make an appropriation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1367 as introduced.)

CHEATHAM, Chair

Committee Vote: yeas 6, nays 5.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1367 be amended to read as follows:

Page 8, line 28, delete "each of".

Page 8, line 28, after "balances" insert "**in the school corporation's general fund and rainy day fund**".

Page 8, line 34, delete "an excessive" and insert "a".

Page 8, line 34, after "balance" insert "**exceeding the percentage specified in subdivision (3)**".

Page 8, line 34, delete "maintained for that month." and insert "**maintained.**".

Page 9, delete lines 5 through 13.

Page 9, delete lines 22 through 29, begin a new paragraph and insert:

"(b) Notwithstanding any other law, if any of the expenditures that were reduced or eliminated under subsection (a) would have been payable from a fund other than the general fund or the transportation fund, the school corporation may transfer the amount of the savings from that fund to the general fund to carry out section 3 of this chapter. A transfer permitted under this subsection is in addition to any transfer permitted



under IC 20-40-8-22."

Page 9, delete line 42.

Page 10, line 1, delete "(5)" and insert "(4)".

Page 10, line 4, delete "(6)" and insert "(5)".

Page 12, between lines 14 and 15, begin a new paragraph and insert:

"Sec. 10. The state board may require a school corporation to provide interim quarterly reports or annual reports summarizing the actions taken under this chapter."

Page 12, line 15, delete "10." and insert "11."

(Reference is to HB 1367 as printed January 25, 2010.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1367 be amended to read as follows:

Page 1, delete lines 6 through 17.

Delete page 2.

Page 3, delete lines 1 through 39.

Page 5, delete lines 16 through 42.

Delete page 6.

Page 7, delete lines 1 through 14.

Re-number all SECTIONS consecutively.

(Reference is to HB 1367 as printed January 25, 2010.)

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