



April 13, 2011

**ENGROSSED
HOUSE BILL No. 1365**

DIGEST OF HB 1365 (Updated April 12, 2011 11:10 am - DI 106)

Citations Affected: IC 36-8.

Synopsis: Volunteer fire department recovery of costs. Allows the first responding volunteer fire department to recover attorney's fees and costs incurred by the department in an action to recover unpaid service charges. Prohibits a volunteer fire department funded by taxes imposed by a unit or by a contract with a unit from imposing a charge on persons who reside or pay property taxes in the unit unless the spill or chemical or hazardous material fire poses an imminent threat to persons or property. Provides that a bill for a service charge by a volunteer fire department must contain: (1) verification that the bill has been approved by the chief of the volunteer fire department; and (2) language indicating that correspondence from the person being billed regarding the bill should be directed to the department. Provides that all bills sent by an agent of a volunteer fire department must be approved by the chief of the volunteer fire department before it is sent to the person being billed for services, and specifies that the chief of the volunteer fire department must review a bill before authorizing an agent to proceed with collection efforts for that bill.

Effective: July 1, 2011.

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Dodge, Neese

(SENATE SPONSOR — ZAKAS)

January 18, 2011, read first time and referred to Committee on Veterans Affairs and Public Safety.

February 15, 2011, reported — Do Pass.

February 17, 2011, read second time, ordered engrossed. Engrossed.

February 21, 2011, read third time, passed. Yeas 88, nays 11.

SENATE ACTION

February 22, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

April 12, 2011, amended, reported favorably — Do Pass.

EH 1365—LS 7054/DI 87+



April 13, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1365

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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 36-8-12-13, AS AMENDED BY P.L.1-2010,
 2 SECTION 154, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2011]: Sec. 13. (a) **Except as provided in**
 4 **subsection (b), the** volunteer fire department **that responds first to an**
 5 **incident** may impose a charge on the owner of property, the owner of
 6 a vehicle, or a responsible party (as defined in IC 13-11-2-191(e)) that
 7 is involved in a hazardous material or fuel spill or chemical or
 8 hazardous material related fire (as defined in IC 13-11-2-96(b)):
 9 (1) that is responded to by the volunteer fire department; and
 10 (2) that members of that volunteer fire department assisted in
 11 extinguishing, containing, or cleaning up.
 12 **A second or subsequently responding volunteer fire department**
 13 **may not impose a charge on an owner or responsible party under**
 14 **this section, although it may be entitled to reimbursement from the**
 15 **first responding volunteer fire department in accordance with an**
 16 **interlocal or other agreement.**
 17 (b) **A volunteer fire department that is funded, in whole or in**

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part:

- (1) by taxes imposed by a unit; or**
- (2) by a contract with a unit;**

may not impose a charge under subsection (a) on a natural person who resides or pays property taxes within the boundaries of the unit described in subdivision (1) or (2), unless the spill or the chemical or hazardous material fire poses an imminent threat to persons or property.

~~(b)~~ **(c)** The volunteer fire department shall bill the owner or responsible party of the vehicle for the total dollar value of the assistance that was provided, with that value determined by a method that the state fire marshal shall establish under ~~IC 36-8-12-16~~. **section 16 of this chapter**. A copy of the fire incident report to the state fire marshal must accompany the bill. This billing must take place within thirty (30) days after the assistance was provided. The owner or responsible party shall remit payment directly to the governmental unit providing the service. Any money that is collected under this section may be:

- (1) deposited in the township firefighting fund established in IC 36-8-13-4;
- (2) used to pay principal and interest on a loan made by the department of homeland security established by IC 10-19-2-1 or a division of the department for the purchase of new or used firefighting and other emergency equipment or apparatus; or
- (3) used for the purchase of equipment, buildings, and property for firefighting, fire protection, and other emergency services.

~~(c)~~ **(d)** Any administrative fees charged by a fire department's agent must be paid only from fees that are collected and allowed by Indiana law and the fire marshal's schedule of fees.

~~(d)~~ **(e)** An agent who processes fees on behalf of a fire department shall send all bills, notices, and other related materials to both the fire department and the person being billed for services.

~~(e)~~ **(f)** All fees allowed by Indiana law and the fire marshal's fee schedule must be itemized separately from any other charges.

~~(f)~~ **(g)** The volunteer fire department may maintain a civil action to recover an unpaid charge that is imposed under subsection (a) **and may, if it prevails, recover all costs of the action, including reasonable attorney's fees.**

SECTION 2. IC 36-8-12-16, AS AMENDED BY P.L.182-2009(ss), SECTION 436, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 16. (a) A volunteer fire department that provides service within a jurisdiction served by the department

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1 may establish a schedule of charges for the services that the department
2 provides not to exceed the state fire marshal's recommended schedule
3 for services. The volunteer fire department or its agent may collect a
4 service charge according to this schedule from the owner of property
5 that receives service if the following conditions are met:

6 (1) At the following times, the department gives notice under
7 IC 5-3-1-4(d) in each political subdivision served by the
8 department of the amount of the service charge for each service
9 that the department provides:

10 (A) Before the schedule of service charges is initiated.

11 (B) When there is a change in the amount of a service charge.

12 (2) The property owner has not sent written notice to the
13 department to refuse service by the department to the owner's
14 property.

15 (3) The bill for payment of the service charge:

16 (A) is submitted to the property owner in writing within thirty
17 (30) days after the services are provided; ~~and~~

18 (B) includes a copy of a fire incident report in the form
19 prescribed by the state fire marshal, if the service was
20 provided for an event that requires a fire incident report;

21 **(C) must contain verification that the bill has been**
22 **approved by the chief of the volunteer fire department;**
23 **and**

24 **(D) must contain language indicating that correspondence**
25 **from the property owner and any question from the**
26 **property owner regarding the bill should be directed to the**
27 **department.**

28 (4) Payment is remitted directly to the governmental unit
29 providing the service.

30 (b) A volunteer fire department shall use the revenue collected from
31 the fire service charges under this section:

32 (1) for the purchase of equipment, buildings, and property for
33 firefighting, fire protection, or other emergency services;

34 (2) for deposit in the township firefighting fund established under
35 IC 36-8-13-4; or

36 (3) to pay principal and interest on a loan made by the department
37 of homeland security established by IC 10-19-2-1 or a division of
38 the department for the purchase of new or used firefighting and
39 other emergency equipment or apparatus.

40 (c) Any administrative fees charged by a fire department's agent
41 must be paid only from fees that are collected and allowed by Indiana
42 law and the fire marshal's schedule of fees.

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1 (d) An agent who processes fees on behalf of a fire department shall
2 send all bills, notices, and other related materials to both the fire
3 department and the person being billed for services.

4 (e) All fees allowed by Indiana law and the fire marshal's fee
5 schedule must be itemized separately from any other charges.

6 (f) If at least twenty-five percent (25%) of the money received by a
7 volunteer fire department for providing fire protection or emergency
8 services is received under one (1) or more contracts with one (1) or
9 more political subdivisions (as defined in IC 34-6-2-110), the
10 legislative body of a contracting political subdivision must approve the
11 schedule of service charges established under subsection (a) before the
12 schedule of service charges is initiated in that political subdivision.

13 (g) A volunteer fire department that:
14 (1) has contracted with a political subdivision to provide fire
15 protection or emergency services; and
16 (2) charges for services under this section;

17 must submit a report to the legislative body of the political subdivision
18 before April 1 of each year indicating the amount of service charges
19 collected during the previous calendar year and how those funds have
20 been expended.

21 (h) The state fire marshal shall annually prepare and publish a
22 recommended schedule of service charges for fire protection services.

23 (i) The volunteer fire department or its agent may maintain a civil
24 action to recover an unpaid service charge under this section **and may,**
25 **if it prevails, recover all costs of the action, including reasonable**
26 **attorney's fees.**

27 SECTION 3. IC 36-8-12-17, AS AMENDED BY P.L.107-2007,
28 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2011]: Sec. 17. (a) If a political subdivision has not imposed
30 its own false alarm fee or service charge, a volunteer fire department
31 that provides service within the jurisdiction may establish a service
32 charge for responding to false alarms. The volunteer fire department
33 may collect the false alarm service charge from the owner of the
34 property if the volunteer fire department dispatches firefighting
35 apparatus or personnel to a building or premises in the township in
36 response to:

- 37 (1) an alarm caused by improper installation or improper
38 maintenance; or
39 (2) a drill or test, if the fire department is not previously notified
40 that the alarm is a drill or test.

41 However, if the owner of property that constitutes the owner's residence
42 establishes that the alarm is under a maintenance contract with an

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1 alarm company and that the alarm company has been notified of the
 2 improper installation or maintenance of the alarm, the alarm company
 3 is liable for the payment of the fee or service charge.

4 (b) Before establishing a false alarm service charge, the volunteer
 5 fire department must provide notice under IC 5-3-1-4(d) in each
 6 political subdivision served by the department of the amount of the
 7 false alarm service charge. The notice required by this subsection must
 8 be given:

9 (1) before the false alarm service charge is initiated; and
 10 (2) before a change in the amount of the false alarm service
 11 charge.

12 (c) A volunteer fire department may not collect a false alarm service
 13 charge from a property owner or alarm company unless the
 14 department's bill for payment of the service charge:

15 (1) is submitted to the property owner in writing within thirty (30)
 16 days after the false alarm; and
 17 (2) includes a copy of a fire incident report in the form prescribed
 18 by the state fire marshal.

19 (d) A volunteer fire department shall use the money collected from
 20 the false alarm service charge imposed under this section:

21 (1) for the purchase of equipment, buildings, and property for fire
 22 fighting, fire protection, or other emergency services;
 23 (2) for deposit in the township firefighting fund established under
 24 IC 36-8-13-4; or
 25 (3) to pay principal and interest on a loan made by the department
 26 of homeland security established by IC 10-19-2-1 or a division of
 27 the department for the purchase of new or used firefighting and
 28 other emergency equipment or apparatus.

29 (e) If at least twenty-five percent (25%) of the money received by a
 30 volunteer fire department for providing fire protection or emergency
 31 services is received under one (1) or more contracts with one (1) or
 32 more political subdivisions (as defined in IC 34-6-2-110), the
 33 legislative body of a contracting political subdivision must approve the
 34 false alarm service charge established under subsection (a) before the
 35 service charge is initiated in that political subdivision.

36 (f) A volunteer fire department that:

37 (1) has contracted with a political subdivision to provide fire
 38 protection or emergency services; and
 39 (2) imposes a false alarm service charge under this section;
 40 must submit a report to the legislative body of the political subdivision
 41 before April 1 of each year indicating the amount of false alarm
 42 charges collected during the previous calendar year and how those

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1 funds have been expended.

2 (g) The volunteer fire department may maintain a civil action to
3 recover unpaid false alarm service charges imposed under this section
4 **and may, if it prevails, recover all costs of the action, including**
5 **reasonable attorney's fees.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Veterans Affairs and Public Safety, to which was referred House Bill 1365, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BORDERS, Chair

Committee Vote: yeas 9, nays 0.

 COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1365, 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 1, line 3, strike "A" and insert "**Except as provided in subsection (b), the**".

Page 1, line 3, after "department" insert "**that responds first to an incident**".

Page 1, between lines 10 and 11, begin a new line blocked left and insert:

"A second or subsequently responding volunteer fire department may not impose a charge on an owner or responsible party under this section, although it may be entitled to reimbursement from the first responding volunteer fire department in accordance with an interlocal or other agreement.

(b) A volunteer fire department that is funded, in whole or in part:

(1) by taxes imposed by a unit; or

(2) by a contract with a unit;

may not impose a charge under subsection (a) on a natural person who resides or pays property taxes within the boundaries of the unit described in subdivision (1) or (2), unless the spill or the chemical or hazardous material fire poses an imminent threat to persons or property."

Page 1, line 11, strike "(b)" and insert "(c)".

Page 2, line 11, strike "(c)" and insert "(d)".

Page 2, line 14, strike "(d)" and insert "(e)".

Page 2, line 17, strike "(e)" and insert "(f)".

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Page 2, line 19, strike "(f)" and insert "(g)".

Page 2, line 20, after "may" insert ", if it prevails,".

Page 2, line 21, after "including" insert "reasonable".

Page 2, line 42, strike "and".

Page 3, line 3, delete "report." and insert "report;

(C) must contain verification that the bill has been approved by the chief of the volunteer fire department; and

(D) must contain language indicating that correspondence from the property owner and any question from the property owner regarding the bill should be directed to the department."

Page 3, line 42, after "may" insert ", if it prevails,".

Page 4, line 1, after "including" insert "reasonable".

Page 5, line 21, after "may" insert ", if it prevails,".

Page 5, line 21, after "including" insert "reasonable".

and when so amended that said bill do pass.

(Reference is to HB 1365 as printed February 15, 2011.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 0.

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