



Reprinted
April 19, 2011

ENGROSSED
SENATE BILL No. 155

DIGEST OF SB 155 (Updated April 18, 2011 2:27 pm - DI 51)

Citations Affected: IC 6-8.1; IC 32-28.

Synopsis: Tax liens. Requires the department to release a judgment if: (1) it has been fully satisfied; or (2) the tax assessment or issuance of the tax warrant was erroneous. Provides that a tax lien on real property is void if the person owing the tax provides written notice to the department to file an action to foreclose the lien, and the department fails to file an action to foreclose the lien not later than 180 days after receiving the notice. Permits a sheriff to collect the outstanding tax liability if the taxpayer has taken an action to foreclose the lien. Specifies that a complaint to foreclose a homeowners association lien may not be filed earlier than 90 days after recording, unless a person files a notice to foreclose the lien, or another person files an action to foreclose the property that is the subject of the lien.

Effective: July 1, 2011.

Steele, Tallian, Randolph

(HOUSE SPONSORS — FOLEY, UBELHOR)

January 5, 2011, read first time and referred to Committee on Judiciary.
January 13, 2011, amended, reported favorably — Do Pass.
January 20, 2011, read second time, amended, ordered engrossed.
January 21, 2011, engrossed.
January 24, 2011, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Judiciary.
April 11, 2011, reported — Do Pass.
April 13, 2011, read second time, ordered engrossed.
April 14, 2011, engrossed.
April 18, 2011, read third time, recommitted to Committee of One, amended; passed. Yeas 61, nays 36.

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ES 155—LS 6170/DI 106+



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 SENATE BILL No. 155

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

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

- 1 SECTION 1. IC 6-8.1-8-2, AS AMENDED BY P.L.111-2006,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3, the
4 department must issue a demand notice for the payment of a tax and
5 any interest or penalties accrued on the tax, if a person files a tax return
6 without including full payment of the tax or if the department, after
7 ruling on a protest, finds that a person owes the tax before the
8 department issues a tax warrant. The demand notice must state the
9 following:
10 (1) That the person has ten (10) days from the date the department
11 mails the notice to either pay the amount demanded or show
12 reasonable cause for not paying the amount demanded.
13 (2) The statutory authority of the department for the issuance of
14 a tax warrant.
15 (3) The earliest date on which a tax warrant may be filed and
16 recorded.
17 (4) The statutory authority for the department to levy against a

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1 person's property that is held by a financial institution.
 2 (5) The remedies available to the taxpayer to prevent the filing
 3 and recording of the judgment.
 4 If the department files a tax warrant in more than one (1) county, the
 5 department is not required to issue more than one (1) demand notice.
 6 (b) If the person does not pay the amount demanded or show
 7 reasonable cause for not paying the amount demanded within the ten
 8 (10) day period, the department may issue a tax warrant for the amount
 9 of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs,
 10 and fees established under section 4(b) of this chapter when applicable.
 11 When the department issues a tax warrant, a collection fee of ten
 12 percent (10%) of the unpaid tax is added to the total amount due.
 13 (c) When the department issues a tax warrant, it may not file the
 14 warrant with the circuit court clerk of any county in which the person
 15 owns property until at least twenty (20) days after the date the demand
 16 notice was mailed to the taxpayer. The department may also send the
 17 warrant to the sheriff of any county in which the person owns property
 18 and direct the sheriff to file the warrant with the circuit court clerk:
 19 (1) at least twenty (20) days after the date the demand notice was
 20 mailed to the taxpayer; and
 21 (2) no later than five (5) days after the date the department issues
 22 the warrant.
 23 (d) When the circuit court clerk receives a tax warrant from the
 24 department or the sheriff, the clerk shall record the warrant by making
 25 an entry in the judgment debtor's column of the judgment record,
 26 listing the following:
 27 (1) The name of the person owing the tax.
 28 (2) The amount of the tax, interest, penalties, collection fee,
 29 sheriff's costs, clerk's costs, and fees established under section
 30 4(b) of this chapter when applicable.
 31 (3) The date the warrant was filed with the clerk.
 32 (e) When the entry is made, the total amount of the tax warrant
 33 becomes a judgment against the person owing the tax. The judgment
 34 creates a lien in favor of the state that attaches to all the person's
 35 interest in any:
 36 (1) chose in action in the county; and
 37 (2) real or personal property in the county;
 38 excepting only negotiable instruments not yet due.
 39 (f) A judgment obtained under this section is valid for ten (10) years
 40 from the date the judgment is filed. The department may renew the
 41 judgment for additional ten (10) year periods by filing an alias tax
 42 warrant with the circuit court clerk of the county in which the judgment

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1 previously existed.

2 (g) A judgment arising from a tax warrant in a county ~~may~~ **shall** be

3 released by the department:

4 (1) after the judgment, including all accrued interest to the date of

5 payment, has been fully satisfied; or

6 (2) if the department determines that the tax assessment or the

7 issuance of the tax warrant was in error.

8 (h) If the department determines that the filing of a tax warrant was

9 in error, the department shall mail a release of the judgment to the

10 taxpayer and the circuit court clerk of each county where the warrant

11 was filed. The department shall mail the release as soon as possible but

12 no later than seven (7) days after:

13 (1) the determination by the department that the filing of the

14 warrant was in error; and

15 (2) the receipt of information by the department that the judgment

16 has been recorded under subsection (d).

17 (i) If the department determines that a judgment described in

18 subsection (h) is obstructing a lawful transaction, the department shall

19 mail a release of the judgment to the taxpayer and the circuit court

20 clerk of each county where the judgment was filed immediately upon

21 making the determination.

22 (j) A release issued under subsection (h) or (i) must state that the

23 filing of the tax warrant was in error. Upon the request of the taxpayer,

24 the department shall mail a copy of a release issued under subsection

25 (h) or (i) to each major credit reporting company located in each county

26 where the judgment was filed.

27 (k) The commissioner shall notify each state agency or officer

28 supplied with a tax warrant list of the issuance of a release under

29 subsection (h) or (i).

30 (l) If the sheriff collects the full amount of a tax warrant, the sheriff

31 shall disburse the money collected in the manner provided in section

32 3(c) of this chapter. If a judgment has been partially or fully satisfied

33 by a person's surety, the surety becomes subrogated to the department's

34 rights under the judgment. If a sheriff releases a judgment:

35 (1) before the judgment is fully satisfied;

36 (2) before the sheriff has properly disbursed the amount collected;

37 or

38 (3) after the sheriff has returned the tax warrant to the department;

39 the sheriff commits a Class B misdemeanor and is personally liable for

40 the part of the judgment not remitted to the department.

41 **(m) A lien on real property described in subsection (e)(2) is void**

42 **if both of the following occur:**

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(1) The person owing the tax provides written notice to the department to file an action to foreclose the lien.

(2) The department fails to file an action to foreclose the lien not later than one hundred eighty (180) days after receiving the notice.

(n) A person who gives notice under subsection (m) by registered or certified mail to the department may file an affidavit of service of the notice to file an action to foreclose the lien with the circuit court clerk in the county in which the property is located. The affidavit must state the following:

- (1) The facts of the notice.
- (2) That more than one hundred eighty (180) days have passed since the notice was received by the department.
- (3) That no action for foreclosure of the lien is pending.
- (4) That no unsatisfied judgment has been rendered on the lien.

(o) Upon receipt of the affidavit described in subsection (n), the circuit court clerk shall make an entry showing the release of the judgment lien in the judgment records for tax warrants.

SECTION 2. IC 6-8.1-8-3, AS AMENDED BY P.L.40-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. **The sheriff shall also have authority to attempt to levy on and collect the outstanding tax liability if the taxpayer does not pay the amount demanded under section 2(b) of this chapter and the taxpayer has taken an action under section 2(n) of this chapter to foreclose the lien.** The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax

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1 warrants.

2 (b) A sheriff shall sell property to satisfy a tax warrant in a manner
 3 that is reasonably likely to bring the highest net proceeds from the sale
 4 after deducting the expenses of the offer to sell and sale. A sheriff may
 5 engage an auctioneer to advertise a sale and to conduct a public
 6 auction, unless the person being levied files an objection with the clerk
 7 of the circuit or superior court having the tax warrant within five (5)
 8 days of the day that the sheriff informs the person of the person's right
 9 to object. The advertising conducted by the auctioneer is in addition to
 10 any other notice required by law, and shall include a detailed
 11 description of the property to be sold. When an auctioneer is engaged
 12 under this subsection and the auctioneer files a verified claim with the
 13 clerk of the circuit or superior court with whom the tax warrant is filed,
 14 the sheriff may pay the reasonable fee and reasonable expenses of the
 15 auctioneer from the gross proceeds of the sale before other expenses
 16 and the judgment arising from the tax warrant are paid. As used in this
 17 section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

18 (c) The sheriff shall deposit all amounts that the sheriff collects
 19 under this section, including partial payments, into a special trust
 20 account for judgments collected that arose from tax warrants. On or
 21 before the fifth day of each month, the sheriff shall disburse the money
 22 in the tax warrant judgment lien trust account in the following order:

23 (1) The sheriff shall pay the department the part of the collections
 24 that represents taxes, interest, and penalties.

25 (2) The sheriff shall pay the county treasurer and the clerk of the
 26 circuit or superior court the part of the collections that represents
 27 their assessed costs.

28 (3) Except as provided in subdivisions (4) and (5), the sheriff
 29 shall keep the part of the collections that represents the ten
 30 percent (10%) collection fee added under section 2(b) of this
 31 chapter.

32 (4) If the sheriff has entered a salary contract under
 33 IC 36-2-13-2.5, the sheriff shall deposit in the county general fund
 34 the part of the collections that represents the ten percent (10%)
 35 collection fee added under section 2(b) of this chapter.

36 (5) If the sheriff has not entered into a salary contract under
 37 IC 36-2-13-2.5, the sheriff shall deposit in the county general fund
 38 the part of the collections that:

39 (A) represents the ten percent (10%) collection fee added
 40 under section 2(b) of this chapter; and

41 (B) would, if kept by the sheriff, result in the total amount of
 42 the sheriff's annual compensation exceeding the maximum

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1 amount allowed under IC 36-2-13-17.
 2 The department shall establish the procedure for the disbursement of
 3 partial payments so that the intent of this section is carried out.
 4 (d) After the period described in subsection (a) has passed, the
 5 sheriff shall return the tax warrant to the department. However, if the
 6 department determines that:
 7 (1) at the end of this period the sheriff is in the process of
 8 collecting the judgment arising from a tax warrant in periodic
 9 payments of sufficient size that the judgment will be fully paid
 10 within one (1) year after the date the judgment was filed; and
 11 (2) the sheriff's electronic data base regarding tax warrants is
 12 compatible with the department's data base;
 13 the sheriff may keep the tax warrant and continue collections.
 14 (e) Notwithstanding any other provision of this chapter, the
 15 department may order a sheriff to return a tax warrant at any time, if the
 16 department feels that action is necessary to protect the interests of the
 17 state.
 18 (f) This subsection applies only to the sheriff of a county having a
 19 consolidated city or a second class city. In such a county, the ten
 20 percent (10%) collection fee added under section 2(b) of this chapter
 21 shall be divided as follows:
 22 (1) Subject to subsection (g), the sheriff may retain forty thousand
 23 dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that
 24 forty thousand dollar (\$40,000) amount.
 25 (2) Two-fifths (2/5) of any fees exceeding that forty thousand
 26 dollar (\$40,000) amount shall be deposited in the sheriff's
 27 department's pension trust fund.
 28 (3) Two-fifths (2/5) of any fees exceeding that forty thousand
 29 dollar (\$40,000) amount shall be deposited in the county general
 30 fund.
 31 (g) If an amount of the collection fee added under section 2(b) of
 32 this chapter would, if retained by the sheriff under subsection (f)(1),
 33 cause the total amount of the sheriff's annual compensation to exceed
 34 the maximum amount allowed under IC 36-2-13-17, the sheriff shall
 35 instead deposit the amount in the county general fund.
 36 (h) Money deposited into a county general fund under subsections
 37 (c)(5) and (g) must be used as follows:
 38 (1) To reduce any unfunded liability of a sheriff's pension trust
 39 plan established for the county's sheriff's department.
 40 (2) Any amounts remaining after complying with subdivision (1)
 41 must be applied to the costs incurred to operate the county's
 42 sheriff's department.

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1 SECTION 3. IC 6-8.1-8-8, AS AMENDED BY P.L.226-2007,
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2011]: Sec. 8. After a tax warrant becomes a judgment under
 4 section 2 of this chapter, ~~or~~ a tax warrant is returned uncollected to the
 5 department under section 3 of this chapter, **or the taxpayer does not**
 6 **pay the amount demanded under section 2(b) of this chapter and**
 7 **the taxpayer has taken an action under section 2(n) of this chapter**
 8 **to foreclose the lien**, the department may take any of the following
 9 actions without judicial proceedings.

10 (1) The department may levy upon the property of the taxpayer
 11 that is held by a financial institution by sending a claim to the
 12 financial institution. Upon receipt of a claim under this
 13 subdivision, the financial institution shall surrender to the
 14 department the taxpayer's property. If the taxpayer's property
 15 exceeds the amount owed to the state by the taxpayer, the
 16 financial institution shall surrender the taxpayer's property in an
 17 amount equal to the amount owed. After receiving the
 18 department's notice of levy, the financial institution is required to
 19 place a sixty (60) day hold on or restriction on the withdrawal of
 20 funds the taxpayer has on deposit or subsequently deposits, in an
 21 amount not to exceed the amount owed.

22 (2) The department may garnish the accrued earnings and wages
 23 of a taxpayer by sending a notice to the taxpayer's employer. Upon
 24 receipt of a notice under this subdivision, an employer shall
 25 garnish the accrued earnings and wages of the taxpayer in an
 26 amount equal to the full amount that is subject to garnishment
 27 under IC 24-4.5-5. The amount garnished shall be remitted to the
 28 department. The employer is entitled to a fee in an amount equal
 29 to the fee allowed under IC 24-4.5-5-105(5). However, the fee
 30 shall be borne entirely by the taxpayer.

31 (3) The department may levy upon and sell property and may:
 32 (A) take immediate possession of the property and store it in
 33 a secure place; or
 34 (B) leave the property in the custody of the taxpayer;
 35 until the day of the sale. The department shall provide notice of
 36 the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the
 37 property is left in the custody of the taxpayer, the department may
 38 require the taxpayer to provide a joint and several delivery bond,
 39 in an amount and with a surety acceptable to the department. At
 40 any time before the sale, any owner or part owner of the property
 41 may redeem the property from the judgment by paying the
 42 department the amount of the judgment. The proceeds of the sale

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1 shall be applied first to the collection expenses and second to the
 2 payment of the delinquent taxes and penalties. Any balance
 3 remaining shall be paid to the taxpayer.
 4 SECTION 4. IC 32-28-14-8, AS AMENDED BY P.L.167-2009,
 5 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2011]: Sec. 8. (a) A homeowners association may enforce a
 7 homeowners association lien by filing a complaint in the circuit or
 8 superior court of the county where the real estate that is the subject of
 9 the lien is located. The complaint:
 10 (1) may not be filed earlier than ~~one (1)~~ **year ninety (90) days,**
 11 **unless:**
 12 **(A) another person files a foreclosure action on the**
 13 **property that is the subject of the lien; or**
 14 **(B) a person files written notice to file an action to**
 15 **foreclose the lien under section 9(a)(1) of this chapter; and**
 16 (2) must be filed not later than five (5) years;
 17 after the date the statement and notice of intention to hold a lien was
 18 recorded under section 6 of this chapter.
 19 (b) If a lien is not enforced within the time set forth in subsection
 20 (a), the lien is void.
 21 (c) If a lien is foreclosed under this chapter, the court rendering
 22 judgment shall order a sale to be made of the real estate subject to the
 23 lien. The officers making the sale shall sell the real estate without any
 24 relief from valuation or appraisal laws.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 155, 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 3, line 2, strike "may" and insert "**shall**".

Page 4, line 4, delete "sixty (60)" and insert "**one hundred eighty (180)**".

Page 4, line 11, delete "sixty (60)" and insert "**one hundred eighty (180)**".

and when so amended that said bill do pass.

(Reference is to SB 155 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 155 be amended to read as follows:

Page 4, after line 25, begin a new paragraph and insert:

"SECTION 2. IC 32-28-14-8, AS AMENDED BY P.L.167-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A homeowners association may enforce a homeowners association lien by filing a complaint in the circuit or superior court of the county where the real estate that is the subject of the lien is located. The complaint:

(1) may not be filed earlier than ~~one (1)~~ **year ninety (90) days, unless:**

(A) another person files a foreclosure action on the property that is the subject of the lien; or

(B) a person files written notice to file an action to foreclose the lien under section 9(a)(1) of this chapter; and

(2) must be filed not later than five (5) years;

after the date the statement and notice of intention to hold a lien was recorded under section 6 of this chapter.

(b) If a lien is not enforced within the time set forth in subsection (a), the lien is void.

(c) If a lien is foreclosed under this chapter, the court rendering



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judgment shall order a sale to be made of the real estate subject to the lien. The officers making the sale shall sell the real estate without any relief from valuation or appraisal laws."

(Reference is to SB 155 as printed January 14, 2011.)

TALLIAN

SENATE MOTION

Madam President: I move that Senate Bill 155 be amended to read as follows:

Page 4, line 9, delete "recorder of" and insert "**circuit court clerk in**".

Page 4, line 18, delete "recorder shall:" and insert "**circuit court clerk shall make an entry showing the release of the judgment lien in the judgment records for tax warrants.**".

Page 4, delete lines 19 through 25.

(Reference is to SB 155 as printed January 14, 2011.)

STEELE

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 155, 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.

FOLEY, Chair

Committee Vote: yeas 8, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 155 be recommitted to a Committee of One, its sponsor, with specific instructions to amend as follows:

Page 4, between lines 19 and 20, begin a new paragraph and insert: "SECTION 2. IC 6-8.1-8-3, AS AMENDED BY P.L.40-2008,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment arising from a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. **The sheriff shall also have authority to attempt to levy on and collect the outstanding tax liability if the taxpayer does not pay the amount demanded under section 2(b) of this chapter and the taxpayer has taken an action under section 2(n) of this chapter to foreclose the lien.** The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for judgments arising from tax warrants.

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and the judgment arising from the tax warrant are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for judgments collected that arose from tax warrants. On or

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before the fifth day of each month, the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

- (1) The sheriff shall pay the department the part of the collections that represents taxes, interest, and penalties.
- (2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.
- (3) Except as provided in subdivisions (4) and (5), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.
- (4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.
- (5) If the sheriff has not entered into a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that:
 - (A) represents the ten percent (10%) collection fee added under section 2(b) of this chapter; and
 - (B) would, if kept by the sheriff, result in the total amount of the sheriff's annual compensation exceeding the maximum amount allowed under IC 36-2-13-17.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. However, if the department determines that:

- (1) at the end of this period the sheriff is in the process of collecting the judgment arising from a tax warrant in periodic payments of sufficient size that the judgment will be fully paid within one (1) year after the date the judgment was filed; and
- (2) the sheriff's electronic data base regarding tax warrants is compatible with the department's data base;

the sheriff may keep the tax warrant and continue collections.

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter

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shall be divided as follows:

- (1) Subject to subsection (g), the sheriff may retain forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.
- (2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.
- (3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general fund.

(g) If an amount of the collection fee added under section 2(b) of this chapter would, if retained by the sheriff under subsection (f)(1), cause the total amount of the sheriff's annual compensation to exceed the maximum amount allowed under IC 36-2-13-17, the sheriff shall instead deposit the amount in the county general fund.

(h) Money deposited into a county general fund under subsections (c)(5) and (g) must be used as follows:

- (1) To reduce any unfunded liability of a sheriff's pension trust plan established for the county's sheriff's department.
- (2) Any amounts remaining after complying with subdivision (1) must be applied to the costs incurred to operate the county's sheriff's department.

SECTION 3. IC 6-8.1-8-8, AS AMENDED BY P.L.226-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. After a tax warrant becomes a judgment under section 2 of this chapter, ~~or~~ a tax warrant is returned uncollected to the department under section 3 of this chapter, **or the taxpayer does not pay the amount demanded under section 2(b) of this chapter and the taxpayer has taken an action under section 2(n) of this chapter to foreclose the lien**, the department may take any of the following actions without judicial proceedings.

- (1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an

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amount not to exceed the amount owed.

(2) The department may garnish the accrued earnings and wages of a taxpayer by sending a notice to the taxpayer's employer. Upon receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the taxpayer.

(3) The department may levy upon and sell property and may:

(A) take immediate possession of the property and store it in a secure place; or

(B) leave the property in the custody of the taxpayer; until the day of the sale. The department shall provide notice of the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the property is left in the custody of the taxpayer, the department may require the taxpayer to provide a joint and several delivery bond, in an amount and with a surety acceptable to the department. At any time before the sale, any owner or part owner of the property may redeem the property from the judgment by paying the department the amount of the judgment. The proceeds of the sale shall be applied first to the collection expenses and second to the payment of the delinquent taxes and penalties. Any balance remaining shall be paid to the taxpayer."

Renumber all SECTIONS consecutively.

(Reference is to ESB 155 as printed April 11, 2011.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred Engrossed Senate Bill 155, begs leave to report that said bill has been amended as directed.

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