

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## 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:

1           Page 4, between lines 19 and 20, begin a new paragraph and insert:  
2           "SECTION 2. IC 6-8.1-8-3, AS AMENDED BY P.L.40-2008,  
3           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           JULY 1, 2011]: Sec. 3. (a) The county sheriff of a county shall attempt  
5           to levy on and collect a judgment arising from a tax warrant in that  
6           county for a period of one hundred twenty (120) days from the date the  
7           judgment lien is entered, unless the sheriff is relieved of that duty at an  
8           earlier time by the department. **The sheriff shall also have authority**  
9           **to attempt to levy on and collect the outstanding tax liability if the**  
10           **taxpayer does not pay the amount demanded under section 2(b) of**  
11           **this chapter and the taxpayer has taken an action under section**  
12           **2(n) of this chapter to foreclose the lien.** The sheriff's authority to  
13           collect the warrant exists only while the sheriff holds the tax warrant,  
14           and if the sheriff surrenders the warrant to the department for any  
15           reason the sheriff's authority to collect that tax warrant ceases. During  
16           the period that the sheriff has the duty to collect a tax warrant, the  
17           sheriff shall collect from the person owing the tax, an amount equal to  
18           the amount of the judgment lien plus the accrued interest to the date of  
19           the payment. Subject to subsection (b), the sheriff shall make the  
20           collection by garnisheeing the person's wages and by levying on and  
21           selling any interest in property or rights in any chose in action that the  
22           person has in the county. The Indiana laws which provide relief for  
23           debtors by exempting certain property from levy by creditors do not

1 apply to levy and sale proceedings for judgments arising from tax  
2 warrants.

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

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

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

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

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

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

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

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

42 (B) would, if kept by the sheriff, result in the total amount of  
43 the sheriff's annual compensation exceeding the maximum  
44 amount allowed under IC 36-2-13-17.

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

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

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

10 the sheriff may keep the tax warrant and continue collections.

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

15 (f) This subsection applies only to the sheriff of a county having a  
 16 consolidated city or a second class city. In such a county, the ten  
 17 percent (10%) collection fee added under section 2(b) of this chapter  
 18 shall be divided as follows:

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

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

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

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

40 SECTION 3. IC 6-8.1-8-8, AS AMENDED BY P.L.226-2007,  
 41 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2011]: Sec. 8. After a tax warrant becomes a judgment under  
 43 section 2 of this chapter, ~~or~~ a tax warrant is returned uncollected to the  
 44 department under section 3 of this chapter, **or the taxpayer does not**  
 45 **pay the amount demanded under section 2(b) of this chapter and**  
 46 **the taxpayer has taken an action under section 2(n) of this chapter**

1       **to foreclose the lien**, the department may take any of the following  
2 actions without judicial proceedings.

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

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

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

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

27           (B) leave the property in the custody of the taxpayer;  
28 until the day of the sale. The department shall provide notice of  
29 the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the  
30 property is left in the custody of the taxpayer, the department may  
31 require the taxpayer to provide a joint and several delivery bond,  
32 in an amount and with a surety acceptable to the department. At  
33 any time before the sale, any owner or part owner of the property  
34 may redeem the property from the judgment by paying the  
35 department the amount of the judgment. The proceeds of the sale  
36 shall be applied first to the collection expenses and second to the

- 1 payment of the delinquent taxes and penalties. Any balance remaining
- 2 shall be paid to the taxpayer."
- 3 Renumber all SECTIONS consecutively.  
(Reference is to ESB 155 as printed April 11, 2011.)

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Representative Foley

| Adopted

Rejected |

# 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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Representative Foley