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# SENATE BILL No. 105

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-1.1-20.3.

**Synopsis:** Adjustments of debt of a political subdivision. Provides that a political subdivision or certain of its creditors may file a petition with the distressed unit appeal board (board) seeking designation of the political subdivision as a distressed political subdivision, based on any one of several failures by the political subdivision to meet its financial obligations. Provides that if the board designates a political subdivision as a distressed political subdivision, the board shall appoint an emergency manager for the distressed political subdivision. Provides that an emergency manager of a distressed political subdivision has broad powers to effect the financial rehabilitation of the distressed political subdivision. Provides that the board may authorize a distressed political subdivision to file a petition for bankruptcy under the United States Bankruptcy Code. Reduces the number of members on the board to three: the director of the office of management and budget, the commissioner of the department of local government finance, and the state examiner of the state board of accounts. Repeals provisions in the distressed unit appeals board statute concerning the board's role in approving ad valorem property tax levies that exceed the statutory circuit breaker limits and provisions concerning the procedure for allowing a distressed political subdivision to appeal actions taken by the board to the tax court.

**Effective:** Upon passage.

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## Charbonneau

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January 5, 2011, read first time and referred to Committee on Judiciary.

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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.

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## SENATE BILL No. 105



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 6-1.1-20.3-2, AS AMENDED BY P.L.146-2008,  
2 SECTION 202, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter,  
4 "distressed political subdivision" means a political subdivision ~~that~~  
5 ~~expects to have the political subdivision's property tax collections~~  
6 ~~reduced by at least five percent (5%) in a calendar year as a result of~~  
7 ~~the application of the credit under IC 6-1.1-20.6 for that calendar year.~~  
8 **designated as a distressed political subdivision by the board under**  
9 **section 6.5 of this chapter.**

10 SECTION 2. IC 6-1.1-20.3-4, AS AMENDED BY P.L.146-2008,  
11 SECTION 203, IS AMENDED TO READ AS FOLLOWS  
12 [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The distressed unit appeal  
13 board is established.

14 (b) The distressed unit appeal board consists of the following  
15 members:

16 (1) The director of the office of management and budget or the  
17 director's designee. The director or the director's designee shall



1 serve as chairperson of the distressed unit appeal board.  
 2 (2) The commissioner of the department of local government  
 3 finance or the commissioner's designee.  
 4 ~~(3) The commissioner of the department of state revenue or the~~  
 5 ~~commissioner's designee.~~  
 6 ~~(4)~~ (3) The state examiner of the state board of accounts or the  
 7 state examiner's designee.  
 8 ~~(5) The following members appointed by the governor:~~  
 9 (A) One ~~(1)~~ member appointed from nominees submitted by  
 10 the Indiana Association of Cities and Towns.  
 11 (B) One ~~(1)~~ member appointed from nominees submitted by  
 12 the Association of Indiana Counties.  
 13 ~~(C)~~ (C) One ~~(1)~~ member appointed from nominees submitted by  
 14 the Indiana Association of School Superintendents.  
 15 A member nominated and appointed under this subdivision must  
 16 be an elected official of a political subdivision.  
 17 (6) One ~~(1)~~ member appointed by the governor (in addition to  
 18 members appointed under subdivision (5)).  
 19 (7) One ~~(1)~~ member appointed by the speaker of the house of  
 20 representatives. A member appointed under this subdivision  
 21 serves a term of four ~~(4)~~ years.  
 22 ~~(c)~~ (c) The members appointed under subsection (b)(5) and subsection  
 23 (b)(6) serve at the pleasure of the governor.  
 24 ~~(d)~~ (c) Each member of the commission is entitled to reimbursement  
 25 for:  
 26 (1) traveling expenses as provided under IC 4-13-1-4; and  
 27 (2) other expenses actually incurred in connection with the  
 28 member's duties as provided in the state policies and procedures  
 29 established by the Indiana department of administration and  
 30 approved by the budget agency.  
 31 SECTION 3. IC 6-1.1-20.3-6, AS AMENDED BY P.L.146-2008,  
 32 SECTION 205, IS AMENDED TO READ AS FOLLOWS  
 33 [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) ~~For property taxes first~~  
 34 ~~due and payable in 2008 and thereafter; Either of the following may~~  
 35 **file a petition with the board seeking to have a political subdivision**  
 36 **designated as a distressed political subdivision under this chapter:**  
 37 (1) The fiscal body **and the executive** of a distressed the political  
 38 subdivision may petition the board for relief as authorized under  
 39 this chapter from the application of the credit under IC 6-1.1-20.6  
 40 for a calendar year: **jointly.**  
 41 (2) **One (1) or more creditors of the political subdivision**  
 42 **having outstanding claims in aggregate that:**

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- 1           (A) exceed thirty percent (30%) of the political
- 2           subdivision's anticipated annual revenues; and
- 3           (B) are ninety (90) days or more past due.
- 4           (b) A petition under subsection (a) must include a proposed
- 5           financial plan for the distressed political subdivision. The proposed
- 6           financial plan must include the following:
- 7           (1) Proposed budgets that would enable the distressed political
- 8           subdivision to cease being a distressed political subdivision.
- 9           (2) Proposed efficiencies, consolidations, cost reductions, uses of
- 10           alternative or additional revenues, or other actions that would
- 11           enable the distressed political subdivision to cease being a
- 12           distressed political subdivision.
- 13           (3) Proposed increases, if any, in the percentage thresholds
- 14           (specified as a percentage of gross assessed value) at which the
- 15           credit under IC 6-1.1-20.6 will apply, including any varying
- 16           percentages for different classes of property.
- 17           (4) Proposed reductions, if any, to the credits under IC 6-1.1-20.6
- 18           (by percentages), including any varying percentage reductions for
- 19           different classes of property.

20           (c) (b) The board may adopt procedures governing the timing and

21           required content of a petition under subsection (a).

22           SECTION 4. IC 6-1.1-20.3-6.5 IS ADDED TO THE INDIANA

23           CODE AS A NEW SECTION TO READ AS FOLLOWS

24           [EFFECTIVE UPON PASSAGE]: **Sec. 6.5. After the board receives**

25           **a petition concerning a political subdivision under section 6 of this**

26           **chapter, the board may designate the political subdivision as a**

27           **distressed political subdivision if at least one (1) of the following**

28           **conditions applies to the political subdivision:**

- 29           (1) The political subdivision has defaulted in payment of
- 30           principal or interest on any of its bonds or notes.
- 31           (2) The political subdivision has missed a payroll for thirty
- 32           (30) days or two (2) consecutive payrolls.
- 33           (3) The political subdivision has failed to make required
- 34           payments to judgment creditors for thirty (30) days beyond
- 35           the date of the recording of the judgment.
- 36           (4) The political subdivision, for at least thirty (30) days
- 37           beyond the due date, has failed to do any of the following:
- 38           (A) Forward taxes withheld on the incomes of employees.
- 39           (B) Failed to transfer employer or employee contributions
- 40           due under the Federal Insurance Contributions Act
- 41           (FICA).
- 42           (C) Failed to deposit its minimum obligation payment to a

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- pension fund.**
- (5) The political subdivision has accumulated in total governmental purpose funds a deficit equal to five percent (5%) or more of its current year revenues.**
- (6) The political subdivision has sought to negotiate a resolution or an adjustment of claims that in aggregate:**
  - (A) exceed thirty percent (30%) of the political subdivision's anticipated annual revenues; and**
  - (B) are ninety (90) days or more past due.**
- (7) The state has intercepted money available for distribution to the political subdivision in order to pay unpaid debt service obligations of the political subdivision that are due, as authorized under IC 6-1.1-20.6-10 or any other law.**
- (8) The political subdivision has interfund loans for the benefit of the same fund carried over year end for two (2) successive years.**

**SECTION 5. IC 6-1.1-20.3-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.5. (a) If the board designates a political subdivision as a distressed political subdivision under section 6.5 of this chapter, the chairperson of the board shall appoint an emergency manager for the distressed political subdivision. An emergency manager serves at the pleasure of the board.**

**(b) The chairperson of the board may appoint a subcommittee to oversee the activities of an emergency manager.**

**SECTION 6. IC 6-1.1-20.3-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8.5. (a) Notwithstanding any other law, an emergency manager of a distressed political subdivision appointed under section 7.5 of this chapter shall do the following:**

- (1) Assume and exercise the authority and responsibilities of both the executive and the fiscal body of the political subdivision concerning the adoption, amendment, and enforcement of ordinances and resolutions. However, the emergency manager does not have the power to impose taxes in addition to those taxes authorized by the political subdivision before the political subdivision was designated a distressed political subdivision.**
- (2) Review the political subdivision's budget.**
- (3) Review salaries of the political subdivision's employees.**

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- 1           **(4) Conduct a financial and compliance audit of the internal**  
 2           **operations of the political subdivision.**  
 3           **(5) Develop a written financial plan in consultation with the**  
 4           **officials of the political subdivision.**  
 5           **(6) Develop a plan for paying all of the political subdivision's**  
 6           **outstanding obligations.**  
 7           **(7) Renegotiate existing labor contracts and act as an agent of**  
 8           **the political subdivision in collective bargaining.**  
 9           **(8) Adopt a budget for the political subdivision for each**  
 10           **calendar or fiscal year, as applicable, that the political**  
 11           **subdivision remains a distressed political subdivision.**  
 12           **(9) Review payrolls and other claims against the political**  
 13           **subdivision before payment.**  
 14           **(10) Make, approve, or disapprove the following:**  
 15               **(A) A contract.**  
 16               **(B) An expenditure.**  
 17               **(C) A loan.**  
 18               **(D) The creation of any new position.**  
 19               **(E) The filling of any vacant position.**  
 20           **(11) Submit a written report to the board every six (6) months**  
 21           **describing the work that has been done to remove the political**  
 22           **subdivision from distressed status.**  
 23           **(12) Petition the board to terminate a political subdivision's**  
 24           **status as a distressed political subdivision when:**  
 25               **(A) the conditions found in section 6.5 of this chapter are**  
 26               **no longer applicable to the political subdivision; and**  
 27               **(B) the political subdivision's bankruptcy proceedings, if**  
 28               **any, have concluded.**  
 29           **(b) An emergency manager of a distressed political subdivision**  
 30           **appointed under section 7.5 of this chapter may do the following:**  
 31               **(1) Reduce or suspend salaries of the political subdivision's**  
 32               **employees.**  
 33               **(2) Enter into agreements with other political subdivisions for**  
 34               **the provision of services.**  
 35               **(3) Recommend to the board that the distressed political**  
 36               **subdivision seek bankruptcy protection under Chapter 9 of**  
 37               **Title 11 of the United States Code.**  
 38           **(c) An emergency manager of a distressed political subdivision**  
 39           **retains the powers and duties described in subsections (a) and (b)**  
 40           **until the political subdivision's status as a distressed political**  
 41           **subdivision is terminated under section 14 of this chapter.**

42           SECTION 7. IC 6-1.1-20.3-13 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 2 [EFFECTIVE UPON PASSAGE]: **Sec. 13. (a) The board, as a state**  
 3 **governmental entity supervising a distressed political subdivision:**  
 4 **(1) may file a petition in the name of the distressed political**  
 5 **subdivision under Chapter 9 of Title 11 of the United States**  
 6 **Code and act on the political subdivision’s behalf in the**  
 7 **bankruptcy proceedings; or**  
 8 **(2) may authorize a distressed political subdivision to file a**  
 9 **petition under Chapter 9 of Title 11 of the United States Code.**  
 10 SECTION 8. IC 6-1.1-20.3-14 IS ADDED TO THE INDIANA  
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 12 [EFFECTIVE UPON PASSAGE]: **Sec. 14. (a) If:**  
 13 **(1) an emergency manager of a distressed political**  
 14 **subdivision; or**  
 15 **(2) the petitioner who moved for designation of the political**  
 16 **subdivision as a distressed political subdivision under section**  
 17 **6 of this chapter;**  
 18 **files a petition with the board for termination of the political**  
 19 **subdivision's status as a distressed political subdivision, the board**  
 20 **shall conduct a public hearing on the question of whether to**  
 21 **terminate control of the distressed political subdivision.**  
 22 **(b) The board shall terminate control of a distressed political**  
 23 **subdivision if the board finds that:**  
 24 **(1) the conditions found in section 6.5 of this chapter are no**  
 25 **longer applicable to the political subdivision; and**  
 26 **(2) the political subdivision's bankruptcy proceedings, if any,**  
 27 **have concluded.**  
 28 SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 29 UPON PASSAGE]: IC 6-1.1-20.3-7; IC 6-1.1-20.3-8; IC 6-1.1-20.3-10;  
 30 IC 6-1.1-20.3-11; IC 6-1.1-20.3-12.  
 31 SECTION 10. **An emergency is declared for this act.**

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