SENATE BILL No. 307

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-31-9-8; IC 27-2-22; IC 36-1-2-13.5; IC 36-7-4; IC 36-8-23; IC 36-8.5.

Synopsis: Public safety funding. Allows a county, municipality, township, or fire protection district to impose a public safety user fee to replace property taxes imposed by the entity. Specifies the purposes for which the public safety user fee may be used. Provides that a public safety user fee may be imposed on the owner of each lot, parcel of property, or building or other real property improvement, regardless of whether the property is exempt from ad valorem property taxes. Specifies that the public safety user fees imposed for a calendar year by an entity are considered property taxes for purposes of calculating the entity's maximum permissible property tax levy for that calendar year and for ensuing calendar years. Provides that such a public safety user fee is in addition to any other fee, rate, or charge imposed under any other statute or under home rule powers. Allows the imposition of an impact fee for capital improvements for public safety purposes. Provides that for purposes of the impact fee statutes, impact costs do not include the costs of infrastructure necessitated by annexation. Requires a property insurer to pay a fire department reimbursement provided in a policy in response to the property owner's claim against the insurer. Allows a fire department to charge the property owner if the reimbursement is not paid.

Effective: July 1, 2011.

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January 10, 2011, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

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. 307

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:

SECTION 1. IC 4-31-9-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. No tax or fee, except as provided in this article, shall be assessed or collected from a permit holder by a political subdivision having the power to assess or collect a tax or fee. This section does not apply to **fees under IC 36-8.5 or** real or personal property taxes imposed by a local taxing unit.

SECTION 2. IC 27-2-22 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 22. Fire Department Reimbursement

Sec. 1. As used in this chapter, "fire department" means a paid fire department or a volunteer fire department that provides fire protection services to a political subdivision.

Sec. 2. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 3. As used in this chapter, "property insurance" means the kind of insurance defined in Class 3 of IC 27-1-5-1.

Sec. 4. As used in this chapter, "reimbursement policy" means a property insurance policy issued or renewed after 2011 that, in addition to coverage for loss or damage to property, provides for reimbursement to a fire department that incurs costs in providing fire protection services to the property for an event that results in the loss or damage.

Sec. 5. After 2011, in response to a claim:

(1) filed with an insurer that provides insurance under a reimbursement policy; and

(2) under which:

(A) the insurer is liable to the claimant; or

(B) the insurer would be liable to the claimant if the policy did not include a deductible;

the insurer shall pay to the fire department the reimbursement referred to in section 4 of this chapter regardless of whether the claim refers to that reimbursement.

SECTION 3. IC 36-1-2-13.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 13.5. "Public safety services" means an expenditure or activity to which IC 36-8.5 applies.**

SECTION 4. IC 36-7-4-1305 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1305. (a) As used in this series, "impact fee" means a monetary charge imposed on new development by a unit **or fire protection district** to defray or mitigate the capital costs of infrastructure that is required by, necessitated by, or needed to serve the new development.

(b) As used in this section, "capital costs" means the costs incurred to provide additional infrastructure to serve new development, including the following:

(1) Directly related costs of construction or expansion of infrastructure, **including buildings and facilities used to provide public safety services,** that is necessary to serve the new development, including reasonable design, survey, engineering, environmental, and other professional fees that are directly related to the construction or expansion.

(2) Directly related land acquisition costs, including costs incurred for the following:

(A) Purchases of interests in land.

(B) Court awards or settlements.

(C) Reasonable appraisal, relocation service, negotiation service, title insurance, expert witness, attorney, and other professional fees that are directly related to the land

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acquisition.

(3) Directly related debt service, subject to section 1330 of this chapter.

(4) Directly related expenses incurred in preparing or updating the comprehensive plan, ~~or~~ **the** zone improvement plan, **or a fire protection district's capital improvement plan,** including all administrative, consulting, attorney, and other professional fees, as limited by section 1330 of this chapter.

SECTION 5. IC 36-7-4-1308 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1308. As used in this series, "infrastructure" means the capital improvements that:

(1) comprise:

(A) a sanitary sewer system or wastewater treatment facility;

(B) a park or recreational facility;

(C) a road or bridge;

(D) a drainage or flood control facility; ~~or~~

(E) a water treatment, water storage, or water distribution facility; **or**

(F) facilities used to provide public safety services;

(2) are:

(A) owned solely for a public purpose by:

(i) a unit; ~~or~~

(ii) a corporation created by a unit; or

(iii) a fire protection district;

(B) leased by a unit solely for a public purpose; ~~and~~ **or**

(C) leased by a fire protection district solely for a public purpose; and

(3) are included in:

(A) the zone improvement plan **by the unit; or**

(B) the zone improvement plan by incorporation of the fire protection district's capital improvement plan under section 1313.5 of this chapter;

of the impact zone in which the capital improvements are located. The term includes site improvements or interests in real property needed for a facility listed in subdivision (1).

SECTION 6. IC 36-7-4-1309 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1309. As used in this series, "infrastructure type" means any of the following types of infrastructure covered by an impact fee ordinance:

(1) Sewer **facilities,** which ~~includes~~ **include** sanitary sewerage and wastewater treatment facilities.

(2) Recreation **facilities,** which ~~includes~~ **include** parks and other

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recreational facilities.

(3) ~~Road,~~ **Roads,** which ~~includes~~ **include** public ways and bridges.

(4) Drainage **facilities,** which ~~includes~~ **include** drains and flood control facilities.

(5) Water **facilities,** which ~~includes~~ **include** water treatment, water storage, and water distribution facilities.

(6) Public safety facilities, which include facilities for:

(A) fire protection; and

(B) police protection.

SECTION 7. IC 36-7-4-1310 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1310. As used in this series, "infrastructure agency" means a political subdivision or an agency of a political subdivision responsible for acquiring, constructing, or providing a particular infrastructure type. **The term includes a fire protection district.**

SECTION 8. IC 36-7-4-1313.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1313.5. (a) This section applies to the adoption of an impact fee by a fire protection district.**

(b) A plan commission shall notify each fire protection district located in whole or in part within the jurisdiction of the plan commission of any new development to be constructed within the jurisdiction of the plan commission.

(c) A fire protection district may adopt a resolution that establishes an impact fee imposed on new development. A resolution adopted under this section must meet the requirements of an impact fee ordinance under sections 1311, 1314, 1315, 1317, 1320, 1321, 1322, 1324, 1327, 1332, 1334, 1337, and 1338 of this chapter. The resolution is effective upon its incorporation in an ordinance adopted by a unit under subsection (f). The boundaries of the impact zone are coterminous with the boundaries of the fire protection district.

(d) The fire protection district may not adopt a resolution establishing an impact fee, and a unit may not adopt an impact fee ordinance incorporating the resolution, unless the fire protection district has prepared or substantially updated a capital improvement plan under section 1313.6 of this chapter during the immediately preceding year. The fire protection district's capital improvement plan shall be included in and considered a part of the unit's zone improvement plan.

(e) A fire protection district may not amend a resolution

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establishing an impact fee, and a unit may not adopt an impact fee ordinance incorporating the resolution, if the amendment makes a significant change in an impact fee schedule or formula, unless a new or substantially updated capital improvement plan has been approved by the fire protection district during the immediately preceding year. The fire protection district's updated capital improvement plan shall be included in and considered a part of the unit's zone improvement plan.

(f) If a unit determines that the resolution adopted by the fire protection district establishing an impact fee complies with the requirements set forth in this series, the unit shall adopt an impact fee ordinance that incorporates the terms of the fire protection district's resolution. If the unit adopts an impact fee for other infrastructure types in the impact zone, the ordinance must aggregate the parts of the impact fee attributable to the different infrastructure types as set forth in section 1311 of this chapter. If a part of the fire protection district lies outside the planning and zoning jurisdiction of the unit, the impact fee ordinance must be approved as set forth in section 1311 of this chapter.

(g) A unit shall notify the fire protection district of any change in a development plan that may result in an increase or a reduction in an impact fee of the fire protection district. The fire protection district may adopt a resolution changing the amount of the impact fee:

(1) as a result of a change in the development plan under section 1322 of this chapter; or

(2) to provide a reduction in the fee for development that provides affordable housing under section 1326 of this chapter.

If the unit determines that the resolution adopted by the fire protection district complies with the requirements set forth in this series, the unit shall adopt an impact fee ordinance that incorporates the terms of the fire protection district's resolution.

(h) A unit shall assess and administer the collection of the impact fee adopted by the fire protection district under this series.

(i) A fee payer of an impact fee adopted by a fire protection district may petition the unit's impact fee review board under section 1336 of this chapter. A person may file an action under section 1339.5 of this chapter regarding an impact fee established by a fire protection district.

SECTION 9. IC 36-7-4-1313.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2011]: **Sec. 1313.6. (a) Before a fire protection district may adopt a resolution establishing an impact fee under section 1313.5 of this chapter, the board of trustees of the district must adopt a capital improvement plan.**

(b) A capital improvement plan under this section must include at least the following components:

(1) Projected fire protection facility needs for:

(A) the current year; and

(B) at least the succeeding four (4) year period.

(2) Estimated capital costs for additional facility needs.

(3) Identification and general description of each project.

(4) The estimated total cost of each project.

(5) Identification of all sources of funds expected to be used for each project.

(6) The planning, development, and construction schedule of each project.

(c) A capital improvement plan must encompass a period of at least five (5) years.

SECTION 10. IC 36-7-4-1318 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1318. **(a) This section does not apply to an impact fee ordinance that imposes only a fire protection district impact fee under section 1313.5 of this chapter.**

~~(a)~~ **(b)** A unit may not adopt an impact fee ordinance under section 1311 of this chapter unless the unit has prepared or substantially updated a zone improvement plan for each impact zone during the immediately preceding one (1) year period. A single zone improvement plan may be used for two (2) or more infrastructure types if the impact zones for the infrastructure types are congruent.

~~(b)~~ **(c)** Each zone improvement plan must contain the following information:

(1) A description of the nature and location of existing infrastructure in the impact zone.

(2) A determination of the current level of service.

(3) Establishment of a community level of service. A unit may provide that the unit's current level of service is the unit's community level of service in the zone improvement plan.

(4) An estimate of the nature and location of development that is expected to occur in the impact zone during the following ten (10) year period.

(5) An estimate of the nature, location, and cost of infrastructure that is necessary to provide the community level of service for the development described in subdivision (4). The plan must indicate

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the proposed timing and sequencing of infrastructure installation.

(6) A general description of the sources and amounts of money used to pay for infrastructure during the previous five (5) years.

~~(c)~~ **(d)** If a zone improvement plan provides for raising the current level of service to a higher community level of service, the plan must:

(1) provide for completion of the infrastructure that is necessary to raise the current level of service to the community level of service within the following ten (10) year period;

(2) indicate the nature, location, and cost of infrastructure that is necessary to raise the current level of service to the community level of service; and

(3) identify the revenue sources and estimate the amount of the revenue sources that the unit intends to use to raise the current level of service to the community level of service for existing development. Revenue sources include, without limitation, any increase in revenues available from one (1) or more of the following:

(A) Adopting or increasing the following:

(i) The county adjusted gross income tax.

(ii) The county option income tax.

(iii) The county economic development income tax.

(iv) The annual license excise surtax.

(v) The wheel tax.

(B) Imposing the property tax rate per one hundred dollars ($100) of assessed valuation that the unit may impose to create a cumulative capital improvement fund under IC 36-9-14.5 or IC 36-9-15.5.

(C) Transferring and reserving for infrastructure purposes other general revenues that are currently not being used to pay for capital costs of infrastructure.

(D) Dedicating and reserving for infrastructure purposes any newly available revenues, whether from federal or state revenue sharing programs or from the adoption of newly authorized taxes.

~~(d)~~ **(e)** A unit must consult with a qualified engineer licensed to perform engineering services in Indiana when the unit is preparing the portions of the zone improvement plan described in subsections ~~(b)(1), (b)(2), (b)(5), and (c)(2).~~ **(c)(1), (c)(2), (c)(5), and (d)(2).**

~~(e)~~ **(f)** A zone improvement plan and amendments and modifications to the zone improvement plan become effective after adoption as part of the comprehensive plan under the 500 SERIES of this chapter or adoption as part of the capital improvements program under section

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503(5) of this chapter. If the unit establishing the impact fee schedule or formula and establishing the zone improvement plan is different from the unit having planning and zoning jurisdiction, the unit having planning and zoning jurisdiction shall incorporate the zone improvement plan as part of the unit's comprehensive plan and capital improvement plan.

~~(f)~~ **(g)** If a unit's zone improvement plan identifies revenue sources for raising the current level of service to the community level of service, impact fees may not be assessed or collected by the unit unless:

(1) before the effective date of the impact fee ordinance, the unit has available or has adopted the revenue sources that the zone improvement plan specifies will be in effect before the impact fee ordinance becomes effective; and

(2) after the effective date of the impact fee ordinance, the unit continues to provide adequate funds to defray the cost of raising the current level of service to the community level of service, using revenue sources specified in the zone improvement plan or revenue sources other than impact fees.

SECTION 11. IC 36-7-4-1319 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1319. (a) **This section does not apply to an impact fee ordinance that imposes only a fire protection district impact fee under section 1313.5 of this chapter.** A unit shall amend a zone improvement plan to make adjustments in the nature, location, and cost of infrastructure and the timing or sequencing of infrastructure installations to respond to the nature and location of development occurring in the impact zone. Appropriate planning and analysis shall be carried out before an amendment is made to a zone improvement plan.

(b) A unit may not amend an impact fee ordinance if the amendment makes a significant change in an impact fee schedule or formula or if the amendment designates an impact zone or alters the boundary of a zone, unless a new or substantially updated zone improvement plan has been approved within the immediately preceding one (1) year period.

SECTION 12. IC 36-7-4-1321 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1321. (a) An impact fee schedule or formula described in section 1320 of this chapter shall be prepared so that the impact fee resulting from the application of the schedule or formula to a development meets the requirements of this section. However, this section does not require that a particular methodology be used in preparing the schedule or formula.

(b) As used in this section, "impact costs" means a reasonable estimate, made at the time the impact fee is assessed, of **the following:**

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(1) The proportionate share of ~~the~~ costs incurred or to be incurred by the unit in providing infrastructure of the applicable type in the impact zone that are necessary to provide the community level of service for the development. The amount of impact costs may not include the costs of infrastructure of the applicable type:

(A) needed to raise the current level of service in the impact zone to the community level of service in the impact zone for development that is existing at the time the impact fee is assessed; **or**

(B) necessitated by annexation by the unit of the territory in which the development occurs for which the impact fee is imposed.

(2) The proportionate share of costs incurred or to be incurred by a fire protection district that imposes an impact fee under section 1313.5 of this chapter to provide infrastructure of the applicable type in the impact zone that is required by, necessitated by, or needed to serve the new development.

(c) As used in this section, "nonlocal revenue" means a reasonable estimate, made at the time the impact fee is assessed, of revenue that:

(1) will be received from any source (including but not limited to state or federal grants) other than a local government source; and

(2) is to be used within the impact zone to defray the capital costs of providing infrastructure of the applicable type.

(d) As used in this section, "impact deductions" means a reasonable estimate, made at the time the impact fee is assessed, of the amounts from the following sources that will be paid during the ten (10) year period after assessment of the impact fee to defray the capital costs of providing infrastructure of the applicable types to serve a development:

(1) Taxes levied by the unit, **by a fire protection district,** or on behalf of the unit by an applicable infrastructure agency that the fee payer and future owners of the development will pay for use within the geographic area of the unit.

(2) Charges and fees, other than fees paid by the fee payer under this chapter, that are imposed by any of the following for use within the geographic area of the unit:

(A) An applicable infrastructure agency.

(B) A governmental entity.

(C) A not-for-profit corporation created for governmental purposes.

Charges and fees covered by this subdivision include tap and availability charges paid for extension of services or the provision

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of infrastructure to the development.

(e) An impact fee on a development may not exceed:

(1) impact costs; minus

(2) the sum of nonlocal revenues and impact deductions.

SECTION 13. IC 36-7-4-1322 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1322. (a) Except as provided in subsection (b), an impact fee ordinance must require that, if the fee payer requests, an impact fee on a development must be assessed not later than thirty (30) days after the earlier of:

(1) the date the fee payer obtains an improvement location permit for the development; or

(2) the date that the fee payer voluntarily submits to the unit a development plan for the development and evidence that the property is properly zoned for the proposed development. The plan shall be in the form prescribed by the unit's zoning ordinance and shall contain reasonably sufficient detail for the unit to calculate the impact fee.

(b) An impact fee ordinance may provide that if a proposed development is of a magnitude that will require revision of the zone improvement plan in order to appropriately serve the new development, the unit shall revise the unit's zone improvement plan and, **if necessary, the fire protection district shall revise the fire protection district's capital improvement plan if the capital improvement plan is incorporated into the unit's zone improvement plan. The unit** shall assess an impact fee on a development not later than one hundred eighty (180) days after the earlier of the following:

(1) The date on which the fee payer obtains an improvement location permit for the development.

(2) The date on which the fee payer submits to the unit a development plan for a development and evidence that the property is properly zoned for the proposed development. The development plan must be in the form prescribed by the unit's zoning ordinance and must contain reasonably sufficient detail for the unit to calculate the impact fee.

(c) An impact fee assessed under ~~subsections~~ **subsection** (a) or (b) may be increased only if the structural building permit has not been issued for the development and the requirements of subsection (d) are satisfied. In the case of a phased development, only a portion of an impact fee assessed under subsection (a) or (b) that is attributable to the portion of the development for which a permit has not been issued may be increased if the requirements of subsection (d) are satisfied.

(d) Unless the improvement location permit or development plan

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originally submitted for the development is changed so that the amount of impact on infrastructure the development creates in the impact zone is significantly increased, an impact fee assessed under:

(1) subsection (a)(1) or (b)(1) may not be increased for the period of the improvement location permit's validity; and

(2) subsection (a)(2) or (b)(2) may not be increased for three (3) years.

(e) An impact fee assessed under subsection (a) or (b) shall be decreased if the improvement location permit or development plan originally submitted for the development is changed so that the amount of impact on infrastructure that the development creates in the impact zone is significantly decreased. If a change occurs in the permit or plan that results in a decrease in the amount of the impact fee after the fee has been paid, the unit that collected the fee shall immediately refund the amount of the overpayment to the fee payer.

(f) If the unit fails to assess an impact fee within the period required by subsection (a) or (b), the unit may not assess an impact fee on the development unless the development plan originally submitted for the development is materially and substantially changed.

(g) Notwithstanding other provisions in this chapter, a unit may not assess an impact fee against a development if:

(1) an improvement location permit has been issued for all or a part of a development before adoption of an impact fee ordinance that is in compliance with this chapter; and

(2) the development satisfies all of the following criteria:

(A) The development is zoned for commercial or industrial use before January 1, 1991.

(B) The development will consist primarily of new buildings or structures. As used in this clause, the term "new buildings or structures" does not include additions or expansions of existing buildings or structures.

(C) The parts of the development for which a structural building permit has not been issued are owned or controlled by the person that owned or controlled the development on January 1, 1991.

(D) A structural building permit is issued for the development not more than four (4) years after the effective date of the impact fee ordinance.

(E) The development is part of a common scheme of development that:

(i) involves land that is contiguous;

(ii) involves a plan for development that includes a survey

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of the land, engineering drawings, and a site plan showing the anticipated size, location, and use of buildings and the anticipated location of streets, sewers, and drainage;

(iii) if plan approval is required, resulted in an application being filed with an appropriate office, commission, or official of the unit before January 1, 1991, that resulted or may result in approval of any phase of the development plan referred to in item (ii);

(iv) has been diligently pursued since January 1, 1991;

(v) resulted before January 1, 1991, in a substantial investment in creating, publicizing, or implementing the common scheme of development; and

(vi) involved the expenditure of significant funds before January 1, 1991, for the provision of improvements, such as roads, sewers, water treatment facilities, water storage facilities, water distribution facilities, drainage systems, or parks, that are on public lands or are available for other development in the area.

(h) Notwithstanding any other provision of this chapter, this chapter does not impair the validity of any contract between a unit and a fee payer that was:

(1) entered into before January 1, 1991; and

(2) executed in consideration of zoning amendments or annexations requested by the fee payer.

SECTION 14. IC 36-7-4-1330 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1330. An impact fee collected under this series shall be used for the following purposes:

(1) Providing funds to an infrastructure agency for the provision of new infrastructure that:

(A) is necessary to serve the new development in the impact zone from which the fee was collected; and

(B) is identified in:

(i) the zone improvement plan **by the unit; or**

(ii) the zone improvement plan by incorporation of the fire protection district's capital improvement plan under section 1313.5 of this chapter.

(2) In an amount not to exceed five percent (5%) of the annual collections of an impact fee, for expenses incurred by the unit **or fire protection district** that paid for the consulting services that were used to establish the impact fee ordinance.

(3) Payment of a refund under section 1332 of this chapter.

(4) Payment of debt service on an obligation issued to provide

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infrastructure described in subdivision (1).

SECTION 15. IC 36-7-4-1339 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1339. (a) This section applies to a person having an interest in real property that may be subject to an impact fee ordinance if the development occurs on the property.

(b) A person may seek to:

(1) have a court determine under IC 34-26-1 any question of construction or validity arising under the impact fee ordinance; and

(2) obtain a declaration of rights, status, or other legal relations under the ordinance.

(c) **Except as provided in section 1339.5 of this chapter,** the validity of an impact fee ordinance adopted by a unit or the validity of the application of the ordinance in a specific impact zone may be challenged under this section on any of the following grounds:

(1) The unit has not provided for a zone improvement plan in the unit's comprehensive plan.

(2) The unit did not prepare or substantially update the unit's zone improvement plan in the year preceding the adoption of the impact fee ordinance.

(3) The unit has not identified the revenue sources the unit intends to use to implement the zone improvement plan, if identification of the revenue sources is required under section ~~1318(c)~~ **1318(d)** of this chapter.

(4) The unit has not complied with the requirements of section ~~1318(f)~~ **1318(g)** of this chapter.

(5) The unit has not made adequate revenue available to complete infrastructure improvements identified in the unit's zone improvement plan.

(6) The impact fee ordinance imposes fees on new development that will not create a need for additional infrastructure.

(7) The impact fee ordinance imposes **fees** on new development ~~fees~~ that are excessive in relation to the infrastructure needs created by the new development.

(8) The impact fee ordinance does not allow for reasonable credits to fee payers.

(9) The unit imposed a prohibition or delay on new development to enable the unit to complete the adoption of an impact fee ordinance.

(10) The unit otherwise fails to comply with this series in the adoption of an impact fee ordinance.

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SECTION 16. IC 36-7-4-1339.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 1339.5. (a) This section applies to an impact fee established by a resolution of a fire protection district and incorporated in an ordinance adopted by a unit under section 1313.5 of this chapter.**

(b) The validity of an impact fee ordinance adopted by a unit or the validity of the application of the ordinance in a specific impact zone may be challenged under this section on any of the following grounds:

(1) The fire protection district has not adopted a capital improvement plan.

(2) The fire protection district did not prepare or substantially update the fire protection district's capital improvement plan in the year preceding the adoption of the impact fee ordinance.

(3) The fire protection district has not made adequate revenue available to complete the infrastructure improvements identified in the fire protection district's capital improvement plan.

(4) The impact fee ordinance imposes fees on new development that will not create a need for additional infrastructure.

(5) The impact fee ordinance imposes fees on new development that are excessive in relation to the infrastructure needs created by the new development.

(6) The impact fee ordinance does not allow for reasonable credits to fee payers.

(7) The unit imposed a prohibition or delay on new development to enable the unit to complete the adoption of an impact fee ordinance.

(8) The unit or the fire protection district otherwise fails to comply with this series in the adoption of an impact fee ordinance.

SECTION 17. IC 36-8-23 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 23. Fire Department Reimbursement

Sec. 1. As used in this chapter, "fire department" means a paid fire department or volunteer fire department that provides fire protection services to a political subdivision.

Sec. 2. After December 31, 2011, a fire department may charge

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a property owner a fee of not more than five hundred dollars ($500) for providing fire protection services to the owner's property if the fire department does not receive within ninety (90) days after providing the services reimbursement under IC 27-2-22 for its costs in providing the services.

Sec. 3. A fire department that imposes a fee under section 2 of this chapter shall mail a statement to the property owner that includes:

(1) the amount of the fee;

(2) a due date not less than thirty (30) days after the date of mailing; and

(3) notice that delinquent fees are subject to enforcement under section 4 of this chapter.

Sec. 4. A delinquent fee under section 2 of this chapter is subject to enforcement in the same manner that public safety user fees are enforced under IC 36-8.5.

SECTION 18. IC 36-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

ARTICLE 8.5. OPTIONAL PUBLIC SAFETY USER FEES

Chapter 1. Definitions

Sec. 1. For purposes of this article, "eligible entity" means a:

(1) unit; or

(2) fire protection district.

Chapter 2. Application

Sec. 1. This article applies to:

(1) all eligible entities; and

(2) the owner of each:

(A) lot;

(B) parcel of property; or

(C) building or other real property improvement;

subject to assessment under IC 6-1.1-4.

Sec. 2. A rate or charge imposed under this article applies to all property referred to in section 1(2) of this chapter that is subject to assessment under IC 6-1.1-4, regardless of whether the property is exempt from ad valorem property taxes.

Sec. 3. This article applies to an expenditure to establish, maintain, operate, provide facilities or equipment for, contract for, finance, or repay a judgment or other obligation related to any of the following:

(1) A police and law enforcement system to preserve public peace and order.

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(2) A firefighting and fire prevention system.

(3) Emergency ambulance services (as defined in IC 16-18-2-107), except as part of a levy for a county hospital under IC 16-22 or a municipal hospital under IC 16-23.

(4) Emergency medical services (as defined in IC 16-18-2-110), except as part of a levy for a county hospital under IC 16-22 or a municipal hospital under IC 16-23.

(5) Emergency action (as defined in IC 13-11-2-65).

Sec. 4. The activities and systems to which this article applies include the following:

(1) A communications system (as defined in IC 36-8-15-3) or an enhanced emergency telephone system (as defined in IC 36-8-16-2).

(2) Pension payments for any of the following:

(A) A member of a fire department (as defined in IC 36-8-1-8) or any other employee of a fire department.

(B) A member of a police department (as defined in IC 36-8-1-9), a police chief hired under a waiver under IC 36-8-4-6.5, or any other employee hired by a police department.

(C) A county sheriff or any other member of the office of the county sheriff.

(D) Other personnel employed to provide a service described in section 3 of this chapter.

(3) Operation of the following:

(A) A county jail.

(B) A juvenile detention center.

Sec. 5. This article does not apply to expenditures related to the following:

(1) A court.

(2) A probation department of a court.

(3) Confinement, supervision, community correction services, or other correctional services at a facility other than a county jail or juvenile detention center for a person who has been:

(A) diverted before a final hearing or trial under an agreement that:

(i) is between the county prosecuting attorney and the person or the person's custodian, guardian, or parent; and

(ii) provides for confinement, supervision, community correction services, or other correctional services instead of a final action described in clause (B) or (C);

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(B) convicted of a crime; or

(C) adjudicated a delinquent child or a child in need of services in a facility.

Sec. 6. This article applies only to budget years beginning after December 31, 2011.

Chapter 3. Adoption and Use of Rates or Charges

Sec. 1. (a) The legislative body of an eligible entity may adopt an ordinance to impose rates or charges for a public safety user fee under this article on all property referred to in IC 36-8.5-2-1(2). The revenue from a rate or charge imposed under this article may be used only for a purpose specified in IC 36-8.5-2-3 and IC 36-8.5-2-4.

(b) The department of local government finance shall for a calendar year reduce the property tax levy actually imposed by the eligible entity by an amount equal to the rates or charges to be imposed under this article for the calendar year by the eligible entity.

(c) Rates or charges imposed under this article for a calendar year by an eligible entity shall be considered property taxes for purposes of calculating the eligible entity's maximum permissible ad valorem property tax levy for that calendar year and for ensuing calendar years.

(d) The legislative body of an eligible entity may by ordinance increase, decrease, or eliminate rates or charges imposed under this article. If the legislative body of an eligible entity wishes to impose, increase, decrease, or eliminate rates or charges under this article for the ensuing calendar year, the legislative body must adopt the ordinance to do so not later than the last date on which the eligible entity must adopt its budget, tax rate, and tax levy for the ensuing calendar year.

Sec. 2. A rate or charge imposed under this article is in addition to any other fee, rate, or charge imposed by an eligible entity under any other statute or under the eligible entity's home rule powers specified in this title.

Chapter 4. Replacement of Property Tax Levies; Repayment of Prior Debt

Sec. 1. The replacement of property tax levies by rates or charges imposed under this article does not release or extinguish a debt of an eligible entity that was incurred before January 1, 2012. However, to the extent permitted under the Constitution of the United States and the Constitution of the State of Indiana, a law entitling a holder of an obligation to enforce a right to

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repayment from property tax levies does not apply after December 31, 2011, to a holder of an obligation that was created before January 1, 2012, but was incurred to finance an activity to which this article applies.

Sec. 2. If an agreement with an eligible entity entered into before January 1, 2012, or a judgment entered against an eligible entity before January 1, 2012, requires the eligible entity to make payments after December 31, 2011, from property tax levies that are replaced by rates or charges imposed under this article, the holders of the obligations are entitled to payment from all other sources of receipts that are available to the eligible entity after December 31, 2011, except receipts that by law or the terms of a grant are restricted to another use.

Chapter 5. Distributions Based on Assessed Value

Sec. 1. Rates or charges imposed under this article are treated as ad valorem property taxes for the purpose of distributions under any law that computes a distribution on the assessed value of the tangible property in an eligible entity or on the property tax levy imposed by the eligible entity.

Sec. 2. The department of local government finance shall provide the information for the department of state revenue and county auditors to make the distributions described in section 1 of this chapter.

Sec. 3. Money received under any law referred to in section 1 of this chapter shall be used to reduce the rates or charges imposed under IC 36-8.5-6.

Chapter 6. Application and Calculation of Rates or Charges

Sec. 1. Except as provided in section 12 of this chapter, rates or charges imposed by an eligible entity under this article apply to:

(1) the owner of property in the eligible entity; and

(2) if the eligible entity has entered into a contract to provide public safety services outside the eligible entity, the owner of property outside the eligible entity served under the contract.

Sec. 2. The rates or charges for public safety services may be determined based on the following:

(1) A flat charge for each:

(A) lot;

(B) parcel of property; or

(C) building or other real property improvement.

(2) The amount of public safety services used.

(3) The relative police or fire risk, as determined by insurance ratings and other information available to the eligible entity.

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(4) Whether the eligible entity is required to purchase or lease special facilities or equipment to deliver public safety services to the property.

(5) A combination of these or other factors that the eligible entity determines is necessary to establish just and equitable fees.

Sec. 3. The rates or charges for public safety services do not have to be uniform throughout the eligible entity or for all users. The legislative body of an eligible entity may exercise reasonable discretion in:

(1) adopting different schedules of rates or charges; or

(2) making classifications in schedules of rates or charges:

(A) based on variations in the costs of furnishing the services, including capital expenditures required, to various classes of users or to various locations in the eligible entity; or

(B) where there are variations in the number of users in various locations in the eligible entity.

Sec. 4. If services will not be provided until after a capital improvement is completed, an eligible entity may bill and collect rates or charges for the services to be provided after the contract for construction of the capital improvement has been let and actual work commenced in an amount sufficient to meet the interest on the revenue bonds and other expenses payable before the completion of the capital improvement.

Sec. 5. Unless the eligible entity finds and directs otherwise, public safety services are considered to benefit every:

(1) lot;

(2) parcel of land; or

(3) building or other real property improvement;

in the eligible entity. The fees shall be billed and collected accordingly.

Sec. 6. If the legislative body of an eligible entity establishes just and equitable rates or charges under this article for the use of the public safety services provided by the eligible entity, the rates or charges are payable by the owner of each lot, parcel of land, or building or other real property improvement that:

(1) is in the eligible entity; or

(2) in any way uses or is served by the eligible entity.

Sec. 7. (a) The legislative body shall determine the amount of the rates or charges under this article.

(b) The rates or charges established after notice and hearing

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under this article are prima facie just and equitable.

Sec. 8. The initial rates or charges may be established only after a public hearing at which all:

(1) the property owners to be served by the eligible entity; and

(2) others interested;

have an opportunity to be heard concerning the proposed rates or charges.

Sec. 9. After introduction of the ordinance initially establishing rates or charges but before the ordinance is finally adopted, notice of the hearing setting forth the proposed schedule of the rates or charges must be given by publication one (1) time each week for two (2) weeks in a newspaper of general circulation in the eligible entity. The last publication must be at least seven (7) days before the date fixed in the notice for the hearing. The hearing may be adjourned as necessary.

Sec. 10. (a) The ordinance establishing the initial rates or charges, either as:

(1) originally introduced; or

(2) modified and amended;

may be passed and put into effect after the hearing.

(b) A copy of the schedule of the rates or charges established must be:

(1) kept on file in the principal office of the eligible entity; and

(2) open to public inspection.

Sec. 11. (a) The rates or charges established for a class of users of property served shall be extended to cover any additional property served after the rates or charges are established that are in the same class without the necessity of hearing or notice.

(b) A change or readjustment of the rates or charges may be made in the same manner as the rates or charges were originally established.

Sec. 12. An eligible entity may:

(1) exempt or partially exempt from a rate or charge imposed under this article a person that provides to the person's property referred to in IC 36-8.5-2-1(2) at the person's expense any of the services or systems referred to in IC 36-8.5-2-3;

(2) charge a person exempt under subdivision (1) for providing to the person any of the services or systems referred to in IC 36-8.5-2-3; and

(3) contract with a person to:

(A) partially exempt the person from a rate or charge

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imposed under this article; and

(B) provide services and systems referred to in IC 36-8.5-2-3 to the person for a lower charge than would apply under subdivision (2).

Chapter 7. Liens for Rates and Charges

Sec. 1. The rates or charges made, assessed, or established under this article against:

(1) a lot;

(2) a parcel of land; or

(3) a building or other real property improvement;

in the eligible entity or served by the eligible entity are a lien against the lot, parcel of land, or building or other real property improvement.

Sec. 2. Except as provided in sections 5 and 6 of this chapter, a lien attaches at the time of the recording of the list in the county recorder's office as provided in IC 36-8.5-8. The lien:

(1) is superior to and takes precedence over all other liens except the lien for taxes; and

(2) shall be enforced under this article.

Sec. 3. If rates or charges are not paid within the time fixed by the eligible entity, the rates or charges become delinquent and a penalty of ten percent (10%) of the amount of the rates or charges attaches to the rates or charges. The eligible entity may recover:

(1) the amount due;

(2) the penalty; and

(3) reasonable attorney's fees;

in a civil action in the name of the eligible entity.

Sec. 4. The rates or charges, together with the penalty, are collectible in the manner provided by this article.

Sec. 5. (a) A rate or charge is not enforceable as a lien against a subsequent owner of property unless the lien for the rate or charge was recorded with the county recorder before the conveyance to the subsequent owner.

(b) If the property is conveyed before the lien can be filed, the officer of the eligible entity who is charged with the collection of the rate or charge shall notify the person that owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not less than fifteen (15) days after the date of the notice. If payment is not received before one hundred eighty (180) days after the date of the notice have elapsed, the amount due may be expensed as a bad debt loss.

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Sec. 6. (a) This section applies whenever a property owner has notified the eligible entity by certified mail with return receipt requested of the address to which the owner's notice is to be sent.

(b) A lien does not attach against a lot, parcel of land, or building or other real property improvement occupied by someone other than the owner unless the officer of the eligible entity who is charged with the collection of rates or charges notifies the owner of the property after the rates or charges have become sixty (60) days delinquent.

Sec. 7. (a) The eligible entity shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

on receipt of a verified demand in writing from the purchaser.

(b) The demand must state the following:

(1) That the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner.

(2) That the purchaser has not been paid by the seller for the delinquent fees.

Chapter 8. Enforcement of Delinquencies

Sec. 1. This chapter applies only to rates or charges or penalties that have been due and unpaid for at least ninety (90) days.

Sec. 2. The officer of the eligible entity who is charged with the collection of the rates or charges shall enforce payment of the rates or charges. The officer shall, not more than two (2) times each year, prepare a list of the delinquent rates or charges, including the amount of the penalty, that are enforceable under this chapter. The list must include the following:

(1) The name of each owner of each lot or parcel of real property on which the rates or charges have become delinquent.

(2) The description of the property as shown by the records of the office of the county auditor.

(3) The amount of the rates or charges, together with the amount of the penalty.

Sec. 3. (a) The officer of the eligible entity shall record a copy of the list in the office of the county recorder.

(b) The county recorder shall charge a fee for recording the list in accordance with the fee schedule established in IC 36-2-7-10.

(c) After recording the list, the officer shall mail to each property owner on the list a notice stating that a lien against the owner's property has been recorded.

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(d) This subsection applies only to a county that does not contain a consolidated city. A service charge of five dollars ($5), which is in addition to the recording fee charged under this section and section 6 of this chapter, shall be added to each delinquent rate or charge that is recorded.

Sec. 4. (a) This section applies only to a county containing a consolidated city.

(b) Using the lists prepared and recorded under sections 2 and 3 of this chapter, the officer of the eligible entity shall certify to the county auditor a list of the liens that remain unpaid according to the following schedule:

(1) Liens recorded on or after August 1 of the preceding year and before February 1 of the current year shall be certified before March 1 of each year for collection in May of the same year.

(2) Liens recorded on or after February 1 of the current year and before August 1 of the current year shall be certified before September 1 of each year for collection in November of the same year.

(c) The county and the officers and employees of the county are not liable for any material error in the information on the list prepared under subsection (b).

Sec. 5. (a) This section applies only to a county that does not contain a consolidated city.

(b) Using the lists prepared and recorded under sections 2 and 3 of this chapter:

(1) after April 1 of the preceding year; and

(2) before April 1 of the current year;

the officer of the eligible entity shall before June 1 of each year certify to the county auditor a list of the liens that remain unpaid for collection in the next November.

(c) The county and the officers and employees of the county are not liable for any material error in the information on the list.

Sec. 6. (a) The officer of the eligible entity shall release a recorded lien when the:

(1) delinquent rates or charges;

(2) penalties;

(3) service charges; and

(4) recording fees;

have been fully paid.

(b) The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

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Sec. 7. (a) This subsection applies to a county that does not contain a consolidated city. On receipt of the list under section 5 of this chapter, the county auditor shall add a fifteen dollar ($15) certification fee for each lot or parcel of real property on which rates or charges are delinquent. The certification fee is in addition to all other fees and rates or charges. The county auditor shall immediately enter on the tax duplicate for the municipality the:

(1) delinquent rates or charges;
(2) penalties;
(3) service charges;
(4) recording fees; and
(5) certification fees;

that are due not later than the due date of the next November installment of property taxes.

(b) This subsection applies to a county having a consolidated city. On receipt of the list under section 4 of this chapter, the county auditor shall enter on the tax duplicate the:

(1) delinquent fees;
(2) penalties;
(3) service charges; and
(4) recording fees;

that are due not later than the due date of the next installment of property taxes.

(c) The county treasurer shall include any unpaid charges for the:

(1) delinquent rate or charge;
(2) penalty;
(3) service charge;
(4) recording fee; and
(5) certification fee;

for each owner of each lot or parcel of real property at the time the next cycle's property tax installment is billed.

Sec. 8. (a) This section does not apply to a county containing a consolidated city.

(b) After June 1 of each year, the officer of the eligible entity may not collect or accept:

(1) delinquent rates or charges;
(2) penalties;
(3) service charges;
(4) recording fees; or
(5) certification fees;

from property owners whose property has been certified to the

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county auditor.

Sec. 9. If a:

(1) delinquent rate or charge;

(2) penalty;

(3) service charge;

(4) recording fee; or

(5) certification fee;

is not paid, the county treasurer shall collect the unpaid money in the same way that delinquent property taxes are collected.

Sec. 10. (a) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all:

(1) rates or charges;

(2) fees; and

(3) penalties;

that have been collected.

(b) The county auditor shall:

(1) deduct the service charges and certification fees collected by the county treasurer; and

(2) pay to the officer of the eligible entity the remaining fees and penalties due the eligible entity.

(c) The county treasurer shall:

(1) retain the service charges and certification fees that have been collected; and

(2) deposit the charges and fees in the county general fund.

Sec. 11. (a) This section applies to a:

(1) rate or charge;

(2) penalty; or

(3) service charge;

that was not recorded before a recorded conveyance.

(b) The:

(1) rate or charge;

(2) penalty; or

(3) service charge;

shall be removed from the tax roll for a purchaser who, in the manner prescribed by IC 36-8.5-7-7, files a verified demand with the county auditor.

Chapter 9. Foreclosure of Liens

Sec. 1. An eligible entity, as an additional or alternative remedy, may foreclose a lien established by this article as a means of collection of rates or charges, including the penalty on the rates or charges.

Sec. 2. (a) In all actions brought to foreclose the liens, the

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eligible entity is entitled to recover the following:

(1) The amount of the rates or charges.

(2) The penalty on the rates or charges.

(3) Reasonable attorney's fees.

(b) The court shall order that the sale be made without relief from valuation or appraisement statutes.

Sec. 3. Except as otherwise provided by this article, the following apply in all actions to foreclose the liens:

(1) The laws concerning municipal public improvement assessments.

(2) The rights, remedies, procedure, and relief granted the parties to the action.

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