

SENATE BILL No. 386

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-1.5-4; IC 36-7-2-1; IC 36-7-4.

Synopsis: Local government reorganization. Requires the plan prepared by a reorganization committee under the government reorganization statutes to include a fiscal impact analysis. Specifies the required contents of the fiscal impact analysis. Requires a reorganization committee to submit the fiscal impact analysis to the department of local government finance (DLGF) at least six months before the election in which the public question will be on the ballot. Requires the DLGF to do the following within a reasonable period of time, but not later than 30 days before the public question: (1) Review the fiscal impact analysis. (2) Make any comments concerning the fiscal impact analysis that the department considers appropriate. (3) Provide comments to the legislative body of the reorganizing political subdivisions and post the comments on the DLGF's Internet web site. Requires the reorganizing political subdivisions to pay the expenses incurred by the DLGF in carrying out the review and preparing the comments. Provides that if the office of township trustee is abolished as part of a local government reorganization, the powers and duties of the township trustee concerning cemeteries are transferred to the county executive. Provides that if a township board is abolished as part of a local government reorganization, the fiscal and legislative powers and duties of the township board concerning cemeteries are transferred to the county fiscal body and the county legislative body. Provides that certification of a public question on a proposed local government reorganization must occur as required for other public questions under the election law. Allows a special election to be held on a public question concerning a proposed government reorganization if the

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Effective: Upon passage.

Waltz, Lawson C, Gard

January 11, 2011, read first time and referred to Committee on Local Government.



reorganizing political subdivisions request the special election and agree to pay the costs of holding the special election. Provides that in the case of a proposed reorganization between a municipality and a township: (1) the voters residing within the municipality shall be included only in the tally of votes for the municipality and shall not be included in the tally of votes for the township; and (2) the voters who reside within the township but do not reside within the municipality shall be included only in the tally of votes for the township and shall not be included in the tally of votes for the municipality. Specifies that a reorganized political subdivision created from two or more townships and at least one municipality that have reorganized: (1) may exercise park and recreation powers and establish a park and recreation board if the reorganized political subdivision's plan of reorganization authorizes the reorganized political subdivision to exercise those powers; and (2) may exercise planning and zoning power if the reorganized political subdivision's plan of reorganization authorizes the reorganized political subdivision to exercise those powers. Provides that such a reorganized political subdivision shall by resolution or in the plan of reorganization determine the number of members to be appointed to the reorganized political subdivision's park and recreation board, advisory plan commission, and board of zoning appeals.

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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. 386

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

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

- 1 SECTION 1. IC 36-1.5-4-18, AS AMENDED BY P.L.113-2010,
- 2 SECTION 110, IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) A reorganization
- 4 committee shall prepare a comprehensive plan of reorganization for the
- 5 reorganizing political subdivisions. The plan of reorganization governs
- 6 the actions, duties, and powers of the reorganized political subdivision
- 7 that are not specified by law.
- 8 (b) The plan of reorganization must include at least the following:
- 9 (1) The name and a description of the reorganized political
- 10 subdivision that will succeed the reorganizing political
- 11 subdivisions.
- 12 (2) A description of the boundaries of the reorganized political
- 13 subdivision.
- 14 (3) Subject to section 40 of this chapter, a description of the
- 15 taxing areas in which taxes to retire obligations of the



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reorganizing political subdivisions will be imposed.

(4) A description of the membership of the legislative body, fiscal body, and executive of the reorganized political subdivision, a description of the election districts or appointment districts from which officers will be elected or appointed, and the manner in which the membership of each elected or appointed office will be elected or appointed.

(5) A description of the services to be offered by the reorganized political subdivision and the service areas in which the services will be offered.

(6) The disposition of the personnel, the agreements, the assets, and, subject to section 40 of this chapter, the liabilities of the reorganizing political subdivisions, including the terms and conditions upon which the transfer of property and personnel will be achieved.

(7) Any other matter that the:

- (A) reorganization committee determines to be necessary or appropriate; or
- (B) legislative bodies of the reorganizing political subdivisions require the reorganization committee;

to include in the plan of reorganization.

(8) In the case of a reorganization described in section 1(a)(9) of this chapter, if the legislative bodies of the reorganizing political subdivisions have specified that the vote on the public question regarding the reorganization shall be conducted on a countywide basis under section 30(b) of this chapter with a rejection threshold, the reorganization committee shall include in the reorganization plan a rejection threshold, specified as a percentage, that applies for purposes of section 32(b) of this chapter. The rejection threshold must be the same for each municipality that is a party to the proposed reorganization and to the county that is a party to the proposed reorganization.

(9) In the case of a reorganization described in section 1(a)(9) of this chapter, the reorganization committee shall determine and include in the reorganization plan the percentage of voters voting on the public question regarding the proposed reorganization who must vote, on a countywide basis, in favor of the proposed reorganization for the public question to be approved. This percentage is referred to in this chapter as the "countywide vote approval percentage". The countywide vote approval percentage must be greater than fifty percent (50%).

(10) The ~~statement~~ **fiscal impact analysis** required by subsection

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(e).
(c) In the case of a reorganization described in section 1(a)(9) of this chapter, the reorganization committee may not change the decision of the legislative bodies of the reorganizing political subdivisions regarding whether the vote on the public question regarding the reorganization shall be conducted on a countywide basis without a rejection threshold or with a rejection threshold.

(d) Upon completion of the plan of reorganization, the reorganization committee shall present the plan of reorganization to the legislative body of each of the reorganizing political subdivisions for adoption. The initial plan of reorganization must be submitted to the legislative body of each of the reorganizing political subdivisions not later than one (1) year after the clerk of the last political subdivision that adopts a reorganization resolution under this chapter has certified the resolution to all of the political subdivisions named in the resolution. In the case of a plan of reorganization submitted to a political subdivision by a reorganization committee after June 30, 2010, the political subdivision shall post a copy of the plan of reorganization on an Internet web site maintained or authorized by the political subdivision not more than thirty (30) days after receiving the plan of reorganization from the reorganization committee.

(e) A reorganization committee must include in the plan of reorganization submitted to a political subdivision after June 30, ~~2010~~, **2011, a statement of: fiscal impact analysis of the proposed reorganization. The fiscal impact analysis must include at least the following:**

(1) whether a fiscal impact analysis concerning the proposed reorganization has been prepared or has not been prepared by or on behalf of the reorganization committee; and

(2) whether a fiscal impact analysis concerning the proposed reorganization has been made available or has not been made available to the public by or on behalf of the reorganization committee.

(1) The estimated effect of the proposed reorganization on taxpayers in each of the political subdivisions to which the proposed reorganization applies, including the expected tax rates, tax levies, expenditure levels, service levels, and annual debt service payments in those political subdivisions.

(2) A description of the planned services to be provided in the reorganized political subdivision, and the method or methods of financing the planned services. The fiscal impact analysis must:

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- 1 (A) present itemized estimated costs for each department
- 2 or agency of the reorganized political subdivision; and
- 3 (B) explain how specific and detailed expenses will be
- 4 funded from taxes, fees, grants, and other funding.
- 5 (3) A description of the capital improvements to be provided
- 6 in the reorganized political subdivision, and the method or
- 7 methods of financing those capital improvements.

8 (f) A reorganization committee must submit the fiscal impact
 9 analysis described in subsection (e) to the department of local
 10 government finance at least six (6) months before the election in
 11 which the public question will be on the ballot. A legislative body
 12 of a reorganizing political subdivision may not adopt a plan of
 13 reorganization unless the reorganization committee has submitted
 14 the fiscal impact analysis to the department of local government
 15 finance as required by this subsection. The department of local
 16 government finance must do the following within a reasonable
 17 period of time, but not later than thirty (30) days before the date
 18 of the election in which the public question will be on the ballot:

- 19 (1) Review the fiscal impact analysis.
- 20 (2) Make any comments concerning the fiscal impact analysis
- 21 that the department considers appropriate.
- 22 (3) Provide the department's comments under subdivision (2)
- 23 to the legislative body of the reorganizing political
- 24 subdivisions.
- 25 (4) Post the department's comments under subdivision (2) on
- 26 the department's Internet web site.

27 The department of local government finance shall certify to the
 28 reorganization committee the total amount of expense incurred by
 29 the department in carrying out the department's review and
 30 preparing the department's comments. Upon receipt of the
 31 department's certification of the expenses, the reorganizing
 32 political subdivisions shall immediately pay to the treasurer of
 33 state the amount charged. The share of the cost to be paid by each
 34 reorganizing political subdivision shall be determined by the
 35 reorganization committee. Money paid by a reorganizing political
 36 subdivision under this subsection shall be deposited in the state
 37 general fund.

38 SECTION 2. IC 36-1.5-4-18.5 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE UPON PASSAGE]: **Sec. 18.5. (a) This section applies**
 41 **to a reorganization:**

- 42 (1) that is approved by voters under this article after June 30,

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- 1 **2011; and**
- 2 **(2) in which at least one (1) township is a reorganizing**
- 3 **political subdivision.**
- 4 **(b) Notwithstanding any other law:**
- 5 **(1) if the office of township trustee is abolished as part of a**
- 6 **reorganization described in subsection (a), the powers and**
- 7 **duties of the township trustee within the township concerning**
- 8 **cemeteries under IC 23-14 or any other law are transferred to**
- 9 **the county executive; and**
- 10 **(2) if the township board is abolished as part of a**
- 11 **reorganization described in subsection (a):**
- 12 **(A) the fiscal powers and duties of the township board**
- 13 **within the township concerning cemeteries under IC 23-14**
- 14 **or any other law are transferred to the county fiscal body;**
- 15 **and**
- 16 **(B) the legislative powers and duties of the township board**
- 17 **within the township concerning cemeteries under IC 23-14**
- 18 **or any other law are transferred to the county legislative**
- 19 **body.**

20 SECTION 3. IC 36-1.5-4-27, AS AMENDED BY P.L.113-2010,
 21 SECTION 111, IS AMENDED TO READ AS FOLLOWS
 22 [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) After the county
 23 recorder of each county in which reorganizing political subdivisions are
 24 located has notified the county election board that a public question on
 25 a plan of reorganization is eligible to be placed on the ballot, the county
 26 election board shall, **except as provided in subsection (b)**, place the
 27 public question on the ballot in accordance with IC 3-10-9 on the first
 28 regularly scheduled general election or municipal election (excluding
 29 any primary elections) that will occur in all of the precincts of the
 30 reorganizing political subdivisions ~~at least sixty (60) days after the~~
 31 ~~required notices are received:~~ **after the public question has been**
 32 **certified as provided in IC 3-10-9-3.**

33 **(b) If a regularly scheduled general election or municipal**
 34 **election (excluding any primary elections) will not be held in all of**
 35 **the precincts of the reorganizing political subdivisions during the**
 36 **first year in which the public question is eligible to be placed on the**
 37 **ballot under this section and if the reorganizing political**
 38 **subdivisions request the public question to be placed on the ballot**
 39 **at a special election, the public question shall be placed on the**
 40 **ballot at a special election to be held on the first Tuesday after the**
 41 **first Monday in November of the year. The certification must occur**
 42 **not later than noon on August 1. However, a special election may**

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1 **be held under this subsection only if the reorganizing political**
 2 **subdivisions agree to pay the costs of holding the special election.**
 3 **The county election board shall give notice under IC 5-3-1 of a**
 4 **special election conducted under this subsection. A special election**
 5 **conducted under this subsection is under the direction of the**
 6 **county election board. The county election board shall take all**
 7 **steps necessary to carry out the special election.**

8 SECTION 4. IC 36-1.5-4-32, AS ADDED BY P.L.186-2006,
 9 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 UPON PASSAGE]: Sec. 32. (a) This subsection does not apply to a
 11 reorganization described in section 1(a)(9) of this chapter. A
 12 reorganization as specified in the plan of reorganization is approved if
 13 a majority of the voters in each reorganizing political subdivision
 14 voting on the public question approve the public question on the
 15 reorganization. **If a reorganizing political subdivision includes the**
 16 **territory of another reorganizing political subdivision, the**
 17 **following apply:**

18 **(1) Except as provided in subdivision (2),** the vote of voters of
 19 a reorganizing political subdivision (~~for example, a city~~) who also
 20 are voters in a second reorganizing political subdivision (~~for~~
 21 ~~example, a township~~) that is geographically larger than the first
 22 political subdivision and that includes the territory of the first
 23 political subdivision shall be included only in the tally of votes for
 24 the first reorganizing political subdivision in which the voters
 25 reside.

26 **(2) In the case of a proposed reorganization between a**
 27 **municipality and a township:**

28 **(A) the voters residing within the municipality:**

29 **(i) shall be included only in the tally of votes for the**
 30 **municipality; and**

31 **(ii) shall not be included in the tally of votes for the**
 32 **township; and**

33 **(B) the voters who reside within the township but do not**
 34 **reside within the municipality:**

35 **(i) shall be included only in the tally of votes for the**
 36 **township; and**

37 **(ii) shall not be included in the tally of votes for the**
 38 **municipality.**

39 (b) This subsection applies only to a reorganization described in
 40 section 1(a)(9) of this chapter. The reorganization is approved only if:

41 (1) the percentage of voters voting on the public question who
 42 vote, on a countywide basis, in favor of the proposed

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1 reorganization is at least equal to the countywide vote approval
2 percentage specified in the final reorganization plan;

3 (2) if the legislative bodies of the reorganizing political
4 subdivisions have agreed that the vote on the public question shall
5 be conducted with a rejection threshold, the percentage of voters
6 of the county (excluding the voters of the reorganizing
7 municipalities) voting on the public question who vote against the
8 reorganization is less than the rejection threshold included in the
9 final reorganization plan; and

10 (3) if the legislative bodies of the reorganizing political
11 subdivisions have agreed that the vote on the public question shall
12 be conducted with a rejection threshold, the percentage of voters
13 of each reorganizing municipality voting on the public question
14 who vote against the reorganization is less than the rejection
15 threshold included in the final reorganization plan.

16 If the reorganization is not approved, the reorganization is terminated.
17 If the legislative bodies of the reorganizing political subdivisions have
18 agreed that the vote in the public question shall be conducted with a
19 rejection threshold, then in tabulating the votes under subdivisions (2)
20 and (3), the vote of voters of a reorganizing municipality who also are
21 voters in the county shall be included only in the tally of votes for the
22 municipality in which the voters reside.

23 SECTION 5. IC 36-1.5-4-44 IS ADDED TO THE INDIANA CODE
24 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
25 **UPON PASSAGE]: Sec. 44. (a) A reorganized political subdivision**
26 **consisting of:**

- 27 (1) **two (2) or more townships; and**
28 (2) **at least one (1) municipality;**

29 **that has reorganized under this article may exercise park and**
30 **recreation powers under IC 36-10 if the reorganized political**
31 **subdivision's plan of reorganization authorizes the reorganized**
32 **political subdivision to exercise those powers.**

33 **(b) If a reorganized political subdivision's plan of reorganization**
34 **authorizes the reorganized political subdivision to exercise park**
35 **and recreation powers under IC 36-10, the reorganized political**
36 **subdivision may establish a park and recreation board.**

37 **(c) A park and recreation board established by a reorganized**
38 **political subdivision under this section:**

- 39 (1) **shall exercise park and recreation functions within the**
40 **reorganized political subdivision; and**
41 (2) **has the powers and duties of both a municipal park and**
42 **recreation board and a township park and recreation board**

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under IC 36-10.
(d) A reorganized political subdivision may by resolution or in the reorganized political subdivision's plan of reorganization determine:

- (1) the number of members to be appointed to the reorganized political subdivision's park and recreation board;
- (2) the person or entity that shall appoint or remove those members;
- (3) any required qualifications for those members; and
- (4) the terms of those members.

SECTION 6. IC 36-7-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Except as provided in subsection (b), this chapter applies to all units except townships.

(b) A unit consisting of:

- (1) two (2) or more townships; and
- (2) at least one (1) municipality;

that has reorganized under IC 36-1.5 may exercise planning and zoning power under IC 36-7-4 if the unit's plan of reorganization under IC 36-1.5 authorizes the unit to exercise planning and zoning powers.

SECTION 7. IC 36-7-4-107 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 107. If a provision of this chapter requires a power to be exercised by adoption of an ordinance, a unit described in IC 36-7-2-1(b) shall exercise the power by adoption of a resolution.

SECTION 8. IC 36-7-4-202.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 202.5. (a) ADVISORY. Notwithstanding any other law, the legislative body of a unit described in IC 36-7-2-1(b) may establish by resolution an advisory plan commission.

(b) ADVISORY. If an advisory plan commission is established under this section by a unit described in IC 36-7-2-1(b) and the unit adopts a comprehensive plan under this chapter:

- (1) the advisory plan commission of the unit shall exercise the planning and zoning functions within the unit;
- (2) the advisory plan commission of the unit may not exercise planning and zoning functions within a municipality that has established a plan commission under this chapter (other than a municipality that participated in the reorganization of the unit under IC 36-1.5);

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- 1 (3) the county plan commission may not exercise planning and
- 2 zoning functions within the unit; and
- 3 (4) except as provided in subdivision (2), a municipal plan
- 4 commission of a municipality (other than a municipality that
- 5 participated in the reorganization of the unit under IC 36-1.5)
- 6 may not exercise planning and zoning functions within the
- 7 unit.

8 Notwithstanding any other law, if a municipality (other than a
 9 municipality that participated in the reorganization of the unit
 10 under IC 36-1.5) annexes territory within a unit described in
 11 IC 36-7-2-1(b) after the unit has established an advisory plan
 12 commission under this section, the municipal plan commission of
 13 that municipality may not exercise planning and zoning functions
 14 within that annexed territory.

15 (c) **ADVISORY.** Except as specifically provided in this chapter,
 16 an advisory plan commission established under this section by a
 17 unit described in IC 36-7-2-1(b) shall exercise the planning and
 18 zoning functions within the unit in the same manner that a
 19 municipal plan commission established under this chapter
 20 exercises planning and zoning functions for a municipality.

21 (d) **ADVISORY.** Notwithstanding any other provision, if an
 22 advisory plan commission is established under this section by a unit
 23 described in IC 36-7-2-1(b), the legislative body of the unit shall by
 24 resolution or in the unit's plan of reorganization under IC 36-1.5
 25 determine:

- 26 (1) the number of members to be appointed to the unit's
- 27 advisory plan commission;
- 28 (2) the person or entity that shall appoint or remove those
- 29 members;
- 30 (3) any required qualifications for those members;
- 31 (4) the terms of those members; and
- 32 (5) whether any members or advisory members shall be
- 33 appointed by the county in which the unit is located or by a
- 34 municipality located within the unit.

35 SECTION 9. IC 36-7-4-901.5 IS ADDED TO THE INDIANA
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE UPON PASSAGE]: **Sec. 901.5.** (a) If an advisory plan
 38 commission is established under section 202.5 of this chapter by a
 39 unit described in IC 36-7-2-1(b) and the unit adopts a
 40 comprehensive plan under this chapter, the legislative body of the
 41 unit shall establish a board of zoning appeals.

42 (b) A board of zoning appeals established under this section:

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1 (1) shall exercise its powers and duties under this chapter
 2 within the unit in the same manner that a municipal board of
 3 zoning appeals established under this chapter exercises
 4 powers and duties under this chapter for a municipality; and
 5 (2) may not exercise its powers and duties under this chapter
 6 within a municipality that has established a plan commission
 7 under this chapter (other than a municipality that
 8 participated in the reorganization of the unit under
 9 IC 36-1.5).

10 (c) Notwithstanding any other law, if the legislative body of a
 11 unit described in IC 36-7-2-1(b) establishes a board of zoning
 12 appeals under this section, the legislative body of the unit shall by
 13 resolution or in the unit's plan of reorganization under IC 36-1.5
 14 determine:

- 15 (1) the number of members to be appointed to the unit's board
- 16 of zoning appeals;
- 17 (2) the person or entity that shall appoint or remove those
- 18 members;
- 19 (3) any required qualifications for those members; and
- 20 (4) the terms of those members.

21 SECTION 10. An emergency is declared for this act.

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