



January 28, 2011

SENATE BILL No. 105

DIGEST OF SB 105 (Updated January 26, 2011 4:34 pm - DI 106)

Citations Affected: IC 5-1; IC 6-1.1; noncode.

Synopsis: Adjustments of debt of a political subdivision. Provides that a political subdivision 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. Specifies additional circumstances under which the pledge of revenues for the repayment of an obligation creates a statutory lien, and prohibits an issuer from changing the provisions of an obligation without the consent of 100% of the owners of all outstanding obligations.

Effective: July 1, 2011.

**Charbonneau, Bray, Rogers,
Randolph, Alting, Head, Hershman,
Eckerty, Arnold, Holdman, Lanane,
Glick, Broden**

January 5, 2011, read first time and referred to Committee on Judiciary.
January 27, 2011, amended, reported favorably — Do Pass.

SB 105—LS 6395/DI 113+



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January 28, 2011

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 5-1-14-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2011]: Sec. 4. ~~(a) Notwithstanding any other~~
3 ~~law, a pledge of revenues or other money, or property made by any~~
4 ~~issuer is binding from the time the pledge is made. Revenues or other~~
5 ~~money, or property pledged and thereafter received by the issuer are~~
6 ~~immediately subject to the lien of the pledge without any further act,~~
7 ~~and the lien of a pledge is binding against all parties having claims of~~
8 ~~any kind in tort, contract, or otherwise against the issuer, regardless of~~
9 ~~whether the parties have notice of any lien. No resolution, ordinance,~~
10 ~~indenture, or any other instrument by which a pledge is created needs~~
11 ~~to be filed or recorded except in the records of the issuer.~~

12 (b) (a) Notwithstanding any other law, an issuer may pledge any
13 revenues or other money or pledge or mortgage property to pay debt
14 service on or secure any obligations or any lease rental or contractual
15 payments, if:

16 (1) the issuer has the necessary statutory authority to issue
17 obligations, pay lease rentals, or make contractual payments for

SB 105—LS 6395/DI 113+



1 any project or purpose for which the pledge or mortgage is made;
 2 (2) the revenues, money, or property is legally available, under
 3 federal, state, and local laws, to pay or secure debt service, lease
 4 rentals, or contractual payments; and
 5 (3) the pledge or mortgage does not purport to create an
 6 obligation in violation of any statutory or constitutional limitation
 7 to which the issuer is subject.

8 **(b) Notwithstanding any other law, a pledge of revenues or**
 9 **other money or property made by any issuer to secure the**
 10 **repayment of an obligation, regardless of when made, is binding**
 11 **from the time the pledge is, or was, made and the pledge as of the**
 12 **date the pledge is or was made, creates a statutory lien upon the**
 13 **revenues or other money or property of the issuer pledged at the**
 14 **time the pledge is or was made. Revenues or other money, or**
 15 **property pledged and thereafter received by the issuer, or that may**
 16 **thereafter be held, possessed, maintained, or controlled by, or**
 17 **otherwise in the custody of, the state or any other political**
 18 **subdivision, or any department, agency or instrumentality thereof,**
 19 **under any other law, is immediately subject to the statutory lien of**
 20 **the pledge, with this statutory lien immediately and automatically**
 21 **attaching thereto, without any further act, and the statutory lien of**
 22 **a pledge is binding against all parties having claims of any kind in**
 23 **tort, contract, or otherwise against the issuer, regardless of**
 24 **whether the parties have notice of any lien. No resolution,**
 25 **ordinance, indenture, or any other instrument by which a pledge**
 26 **is created must be filed or recorded except in the records of the**
 27 **issuer.**

28 **(c) Notwithstanding any other law, to the extent that an issuer**
 29 **has pledged any revenues or other money or property to secure the**
 30 **repayment of an obligation, the following provisions apply:**

- 31 (1) Any revenues or other money or property pledged and
 32 thereafter received by the issuer, or which may thereafter be
 33 held, possessed, maintained, or controlled by, or otherwise in
 34 the custody of, the state or any other political subdivision, or
 35 any department, agency, or instrumentality thereof, under
 36 any other law, up to an amount necessary to pay debt service
 37 on or to maintain a reserve fund or any required coverage
 38 ratio in any calendar year or bond year with respect to the
 39 obligation, must be used for the repayment of the obligation
 40 and for no other purpose until the obligation for the calendar
 41 year or bond year is fully paid in accordance with its terms.
 42 (2) An issuer may not consent to or permit, and may not be

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construed as consenting to or permitting, without the consent of one hundred percent (100%) of the owners of all obligations then outstanding, the use of these pledged revenues for any purpose except as described in subdivision (1).

(d) Notwithstanding any other law, to the extent that an issuer has pledged any revenues or other money or property to secure the repayment of an obligation, the following provisions apply:

(1) Any revenues or other money or property that may thereafter be held, possessed, maintained, or controlled by, or otherwise in the custody of, the state or any other political subdivision, or any department, agency, or instrumentality thereof, under any other law and that would otherwise be available for distribution to such issuer, is automatically subject to a statutory lien for purposes of IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11, whether or not such revenues, money, or property has been pledged by the issuer to secure these obligations.

(2) An issuer has no legal or equitable right to any revenues or other money or property that may thereafter be held, possessed, maintained, or controlled by, or otherwise in the custody of, the state or any other political subdivision, or any department, agency, or instrumentality thereof, under any other law and that would otherwise be available for distribution to the issuer, whether or not these revenues, money, or property has been pledged to secure the obligations, until:

(A) any reduction permitted under IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11 has been applied; and

(B) the revenues or other money or property has been distributed to and received by the issuer.

(3) An issuer is prohibited from consenting to or permitting, and may not be construed as consenting to or permitting, the use of any revenues or other money or property reduced under IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11 for any other purpose other than the purposes described in IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11, respectively.

(e) This section shall be liberally construed so that the state and any distressed political subdivision (as defined in IC 6-1.1-20.3-2) shall, to the extent legally permitted under Indiana law, ensure that all bonds, all lease rental payments, and all warrants of each distressed political subdivision are paid when due in accordance

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1 with the original terms thereof irrespective of any other state or
2 federal law. However, this chapter may not be construed to create
3 a debt of the state.

4 SECTION 2. IC 5-1-14-17 IS ADDED TO THE INDIANA CODE
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2011]: Sec. 17. (a) Notwithstanding any other law, the issuer of
7 any obligation shall pay in full the principal of, interest on, and
8 premium on, if any, the obligations in accordance with the terms
9 of the obligations.

10 (b) Notwithstanding any other law, any issuer of an obligation
11 is prohibited from consenting to or permitting, and may not be
12 construed as consenting to or permitting, without the consent of
13 one hundred percent (100%) of the owners of all obligations then
14 outstanding:

- 15 (1) an extension of the stated maturity or a reduction in the
- 16 principal amount of, or a reduction in the rate or an extension
- 17 of the time of payment of interest on, any obligations;
- 18 (2) the creation of any lien on the revenues or other money or
- 19 property pledged to the obligations that is senior or prior to
- 20 the lien upon the obligations;
- 21 (3) a reduction in the aggregate principal amount of the
- 22 obligations;
- 23 (4) the granting of a privilege, priority, or preference to any
- 24 of the obligations over any other of the obligations;
- 25 (5) any amendment or modification of the powers, remedies,
- 26 rights, duties, privileges, or immunities of the owners of the
- 27 obligations.

28 (c) This section shall be liberally construed so that the state and
29 any distressed political subdivision (as defined in IC 6-1.1-20.3-2)
30 shall, to the extent legally permitted under Indiana law, ensure that
31 all bonds, all lease rental payments, and all warrants of each
32 distressed political subdivision are paid when due in accordance
33 with the original terms thereof irrespective of any other state or
34 federal law. However, this chapter may not be construed to create
35 a debt of the state.

36 SECTION 3. IC 5-1-19 IS ADDED TO THE INDIANA CODE AS
37 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
38 1, 2011]:

39 Chapter 19. Property Held by the State

40 Sec. 1. Notwithstanding any other law, a political subdivision
41 has no legal or equitable right to any revenues or other money or
42 property held, possessed, maintained, controlled, or otherwise in

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1 the custody of the state or any department, agency, or
2 instrumentality thereof, that would otherwise be available for
3 distribution to the political subdivision, unless and until the
4 revenues or other money or property has been distributed to and
5 received by the political subdivision.

6 SECTION 4. IC 6-1.1-20.3-2, AS AMENDED BY P.L.146-2008,
7 SECTION 202, IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2011]: Sec. 2. As used in this chapter,
9 "distressed political subdivision" means a political subdivision that
10 expects to have the political subdivision's property tax collections
11 reduced by at least five percent (5%) in a calendar year as a result of
12 the application of the credit under IC 6-1.1-20.6 for that calendar year:
13 **designated as a distressed political subdivision by the board under**
14 **section 6.5 of this chapter.**

15 SECTION 5. IC 6-1.1-20.3-4, AS AMENDED BY P.L.146-2008,
16 SECTION 203, IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The distressed unit appeal
18 board is established.

19 (b) The distressed unit appeal board consists of the following
20 members:

21 (1) The director of the office of management and budget or the
22 director's designee. The director or the director's designee shall
23 serve as chairperson of the distressed unit appeal board.

24 (2) The commissioner of the department of local government
25 finance or the commissioner's designee.

26 (3) The commissioner of the department of state revenue or the
27 commissioner's designee.

28 (4) (3) The state examiner of the state board of accounts or the
29 state examiner's designee.

30 (5) The following members appointed by the governor:

31 (A) One (1) member appointed from nominees submitted by
32 the Indiana Association of Cities and Towns:

33 (B) One (1) member appointed from nominees submitted by
34 the Association of Indiana Counties:

35 (C) One (1) member appointed from nominees submitted by
36 the Indiana Association of School Superintendents:

37 A member nominated and appointed under this subdivision must
38 be an elected official of a political subdivision.

39 (6) One (1) member appointed by the governor (in addition to
40 members appointed under subdivision (5)):

41 (7) One (1) member appointed by the speaker of the house of
42 representatives. A member appointed under this subdivision

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- 1 serves a term of four (4) years.
- 2 (c) The members appointed under subsection (b)(5) and subsection
- 3 (b)(6) serve at the pleasure of the governor.
- 4 (d) (c) Each member of the commission is entitled to reimbursement
- 5 for:
- 6 (1) traveling expenses as provided under IC 4-13-1-4; and
- 7 (2) other expenses actually incurred in connection with the
- 8 member's duties as provided in the state policies and procedures
- 9 established by the Indiana department of administration and
- 10 approved by the budget agency.

11 SECTION 6. IC 6-1.1-20.3-6, AS AMENDED BY P.L.146-2008,
 12 SECTION 205, IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) For property taxes first due
 14 and payable in 2008 and thereafter, The fiscal body **and the executive**
 15 of a distressed political subdivision may petition the board for relief as
 16 authorized under this chapter from the application of the credit under
 17 IC 6-1.1-20.6 for a calendar year. **may jointly file a petition with the**
 18 **board seeking to have the political subdivision designated as a**
 19 **distressed political subdivision under this chapter. However, if the**
 20 **political subdivision is a school corporation, the school board may**
 21 **file a petition under this chapter.**

22 (b) A petition under subsection (a) must include a proposed
 23 financial plan for the distressed political subdivision. The proposed
 24 financial plan must include the following:

- 25 (1) Proposed budgets that would enable the distressed political
- 26 subdivision to cease being a distressed political subdivision.
- 27 (2) Proposed efficiencies, consolidations, cost reductions, uses of
- 28 alternative or additional revenues, or other actions that would
- 29 enable the distressed political subdivision to cease being a
- 30 distressed political subdivision.
- 31 (3) Proposed increases, if any, in the percentage thresholds
- 32 (specified as a percentage of gross assessed value) at which the
- 33 credit under IC 6-1.1-20.6 will apply, including any varying
- 34 percentages for different classes of property.
- 35 (4) Proposed reductions, if any, to the credits under IC 6-1.1-20.6
- 36 (by percentages), including any varying percentage reductions for
- 37 different classes of property.

38 (c) (b) The board may adopt procedures governing the timing and
 39 required content of a petition under subsection (a).

40 SECTION 7. IC 6-1.1-20.3-6.5 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2011]: **Sec. 6.5. (a) After the board receives**

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1 a petition concerning a political subdivision under section 6 of this
 2 chapter, the board may designate the political subdivision as a
 3 distressed political subdivision if at least one (1) of the following
 4 conditions applies to the political subdivision:

5 (1) The political subdivision has defaulted in payment of
 6 principal or interest on any of its bonds or notes.

7 (2) The political subdivision has missed a payroll for thirty
 8 (30) days or two (2) consecutive payrolls.

9 (3) The political subdivision has failed to make required
 10 payments to judgment creditors for sixty (60) days beyond the
 11 date of the recording of the judgment.

12 (4) The political subdivision, for at least thirty (30) days
 13 beyond the due date, has failed to do any of the following:

14 (A) Forward taxes withheld on the incomes of employees.

15 (B) Failed to transfer employer or employee contributions
 16 due under the Federal Insurance Contributions Act
 17 (FICA).

18 (C) Failed to deposit its minimum obligation payment to a
 19 pension fund.

20 (5) The political subdivision has accumulated a deficit equal
 21 to eight percent (8%) or more of its revenues. For purposes of
 22 this subdivision, "deficit" means a negative fund balance
 23 calculated as a percentage of revenues at the end of a budget
 24 year for any governmental or proprietary fund. The
 25 calculation must be presented on an accrual basis according
 26 to generally accepted accounting principles.

27 (6) The political subdivision has sought to negotiate a
 28 resolution or an adjustment of claims that in aggregate:

29 (A) exceed thirty percent (30%) of the political
 30 subdivision's anticipated annual revenues; and

31 (B) are ninety (90) days or more past due.

32 (7) The state has intercepted money available for distribution
 33 to the political subdivision in order to pay unpaid debt service
 34 obligations of the political subdivision that are due, as
 35 authorized under IC 6-1.1-20.6-10 or any other law.

36 (8) The political subdivision has interfund loans for the
 37 benefit of the same fund carried over year end for two (2)
 38 successive years.

39 (b) If the board designates a political subdivision as distressed
 40 under subsection (a), the board shall review the designation
 41 annually to determine if the distressed political subdivision meets
 42 at least one (1) of the conditions listed in subsection (a).

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1 (c) If the board designates a political subdivision as a distressed
2 political subdivision under subsection (a), the board shall
3 immediately notify:

- 4 (1) the treasurer of state; and
- 5 (2) the county auditor and county treasurer of each county in
6 which the distressed political subdivision is wholly or partially
7 located;

8 that the board has designated the political subdivision as a
9 distressed political subdivision.

10 SECTION 8. IC 6-1.1-20.3-7.5 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2011]: **Sec. 7.5. (a) If the board designates a
13 political subdivision as a distressed political subdivision under
14 section 6.5 of this chapter, the board shall appoint an emergency
15 manager for the distressed political subdivision. An emergency
16 manager serves at the pleasure of the board.**

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

19 (c) The distressed political subdivision shall pay the emergency
20 fiscal manager's compensation and reimburse the emergency fiscal
21 manager for actual and necessary expenses.

22 SECTION 9. IC 6-1.1-20.3-8.5 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) Notwithstanding any
25 other law, an emergency manager of a distressed political
26 subdivision appointed under section 7.5 of this chapter shall do the
27 following:**

- 28 (1) Assume and exercise the authority and responsibilities of
29 both the executive and the fiscal body of the political
30 subdivision concerning the adoption, amendment, and
31 enforcement of ordinances and resolutions relating to or
32 affecting the fiscal stability of the political subdivision.
33 However, the emergency manager does not have the power to
34 impose taxes or fees in addition to those taxes or fees
35 authorized by the political subdivision before the political
36 subdivision was designated a distressed political subdivision.
- 37 (2) Review the political subdivision's budget.
- 38 (3) Review salaries of the political subdivision's employees.
- 39 (4) Conduct a financial and compliance audit of the internal
40 operations of the political subdivision.
- 41 (5) Develop a written financial plan in consultation with the
42 officials of the political subdivision not later than six (6)

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- months after appointment.
- (6) Develop a plan for paying all of the political subdivision’s outstanding obligations.
- (7) Review existing labor contracts.
- (8) Adopt a budget for the political subdivision for each calendar or fiscal year, as applicable, that the political subdivision remains a distressed political subdivision.
- (9) Review payrolls and other claims against the political subdivision before payment.
- (10) Make, approve, or disapprove the following:
 - (A) A contract.
 - (B) An expenditure.
 - (C) A loan.
 - (D) The creation of any new position.
 - (E) The filling of any vacant position.
- (11) Submit a written report to the board every three (3) months describing the work that has been done to remove the political subdivision from distressed status.
- (12) Petition the board to terminate a political subdivision's status as a distressed political subdivision when:
 - (A) the conditions found in section 6.5 of this chapter are no longer applicable to the political subdivision; and
 - (B) the political subdivision's bankruptcy proceedings, if any, have concluded.
- (13) Act on behalf of the distressed political subdivision if the distressed political subdivision is authorized under section 13(a)(2) of this chapter to file a petition under Chapter 9, Title 11 of the United States Code.
 - (b) An emergency manager of a distressed political subdivision appointed under section 7.5 of this chapter may do the following:
 - (1) Renegotiate existing labor contracts and act as an agent of the political subdivision in collective bargaining.
 - (2) Reduce or suspend salaries of the political subdivision's employees.
 - (3) Enter into agreements with other political subdivisions for the provision of services.
 - (4) Recommend to the board that the distressed political subdivision seek bankruptcy protection under Chapter 9 of Title 11 of the United States Code.
 - (c) An emergency manager of a distressed political subdivision retains the powers and duties described in subsections (a) and (b) until the political subdivision's status as a distressed political

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subdivision is terminated under section 14 of this chapter.

SECTION 10. IC 6-1.1-20.3-10, AS ADDED BY P.L.146-2008, SECTION 209, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. A ~~distressed~~ political subdivision may petition the tax court for judicial review of a ~~final~~ determination of the board **under section 6.5 of this chapter**. The action must be taken to the tax court under IC 6-1.1-15 in the same manner that an action is taken to appeal a final determination of the Indiana board of tax review. The petition must be filed in the tax court not more than forty-five (45) days after the board enters its final determination.

SECTION 11. IC 6-1.1-20.3-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 13. (a) The board, as a state governmental entity supervising a distressed political subdivision:**

(1) may file a petition in the name of the distressed political subdivision under Chapter 9 of Title 11 of the United States Code and act on the political subdivision's behalf in the bankruptcy proceedings; or

(2) may authorize a distressed political subdivision to file a petition under Chapter 9 of Title 11 of the United States Code.

SECTION 12. IC 6-1.1-20.3-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 14. (a) If:**

(1) an emergency manager of a distressed political subdivision; or

(2) the petitioner who moved for designation of the political subdivision as a distressed political subdivision under section 6 of this chapter;

files a petition with the board for termination of the political subdivision's status as a distressed political subdivision, the board shall conduct a public hearing on the question of whether to terminate control of the distressed political subdivision.

(b) The board shall terminate control of a distressed political subdivision if the board finds that:

(1) the conditions found in section 6.5 of this chapter are no longer applicable to the political subdivision; and

(2) the political subdivision's bankruptcy proceedings, if any, have concluded.

(c) Notwithstanding any other section of this chapter, not later than ninety (90) days after taking office, a new executive of a distressed political subdivision may petition the board for

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1 suspension of the political subdivision's distressed status. The
 2 executive must include in its petition a written plan to resolve the
 3 applicable issues described in section 6.5 of this chapter. If the
 4 board approves the executive's written plan, the board may
 5 suspend the political subdivision's distressed status for one
 6 hundred eighty (180) days. Suspension under this chapter
 7 terminates automatically upon expiration of the one hundred
 8 eighty (180) day period. The board may consider a petition to
 9 terminate the political subdivision's distressed status during a
 10 period of suspension.

11 SECTION 13. THE FOLLOWING ARE REPEALED [EFFECTIVE
 12 JULY 1, 2011]: IC 6-1.1-20.3-7; IC 6-1.1-20.3-8.

13 SECTION 14. [EFFECTIVE JULY 1, 2011] (a) **Notwithstanding**
 14 **this act, the final determinations of the existing distressed unit**
 15 **appeal board remain in effect until the final settlement of the 2011**
 16 **Lake County property tax bills.**

17 (b) This SECTION expires December 31, 2013.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 105, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Replace the effective dates in SECTIONS 1 through 9 with "[EFFECTIVE JULY 1, 2011]".

Between the enacting clause and line 1, begin a new paragraph and insert:

SECTION 1. IC 5-1-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) Notwithstanding any other law, a pledge of revenues or other money, or property made by any issuer is binding from the time the pledge is made. Revenues or other money, or property pledged and thereafter received by the issuer are immediately subject to the lien of the pledge without any further act, and the lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the issuer, regardless of whether the parties have notice of any lien. No resolution, ordinance, indenture, or any other instrument by which a pledge is created needs to be filed or recorded except in the records of the issuer.

(b) (a) Notwithstanding any other law, an issuer may pledge any revenues or other money or pledge or mortgage property to pay debt service on or secure any obligations or any lease rental or contractual payments, if:

- (1) the issuer has the necessary statutory authority to issue obligations, pay lease rentals, or make contractual payments for any project or purpose for which the pledge or mortgage is made;
- (2) the revenues, money, or property is legally available, under federal, state, and local laws, to pay or secure debt service, lease rentals, or contractual payments; and
- (3) the pledge or mortgage does not purport to create an obligation in violation of any statutory or constitutional limitation to which the issuer is subject.

(b) Notwithstanding any other law, a pledge of revenues or other money or property made by any issuer to secure the repayment of an obligation, regardless of when made, is binding from the time the pledge is, or was, made and the pledge as of the date the pledge is or was made, creates a statutory lien upon the revenues or other money or property of the issuer pledged at the time the pledge is or was made. Revenues or other money, or property pledged and thereafter received by the issuer, or that may thereafter be held, possessed, maintained, or controlled by, or

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otherwise in the custody of, the state or any other political subdivision, or any department, agency or instrumentality thereof, under any other law, is immediately subject to the statutory lien of the pledge, with this statutory lien immediately and automatically attaching thereto, without any further act, and the statutory lien of a pledge is binding against all parties having claims of any kind in tort, contract, or otherwise against the issuer, regardless of whether the parties have notice of any lien. No resolution, ordinance, indenture, or any other instrument by which a pledge is created must be filed or recorded except in the records of the issuer.

(c) Notwithstanding any other law, to the extent that an issuer has pledged any revenues or other money or property to secure the repayment of an obligation, the following provisions apply:

- (1) Any revenues or other money or property pledged and thereafter received by the issuer, or which may thereafter be held, possessed, maintained, or controlled by, or otherwise in the custody of, the state or any other political subdivision, or any department, agency, or instrumentality thereof, under any other law, up to an amount necessary to pay debt service on or to maintain a reserve fund or any required coverage ratio in any calendar year or bond year with respect to the obligation, must be used for the repayment of the obligation and for no other purpose until the obligation for the calendar year or bond year is fully paid in accordance with its terms.
- (2) An issuer may not consent to or permit, and may not be construed as consenting to or permitting, without the consent of one hundred percent (100%) of the owners of all obligations then outstanding, the use of these pledged revenues for any purpose except as described in subdivision (1).

(d) Notwithstanding any other law, to the extent that an issuer has pledged any revenues or other money or property to secure the repayment of an obligation, the following provisions apply:

- (1) Any revenues or other money or property that may thereafter be held, possessed, maintained, or controlled by, or otherwise in the custody of, the state or any other political subdivision, or any department, agency, or instrumentality thereof, under any other law and that would otherwise be available for distribution to such issuer, is automatically subject to a statutory lien for purposes of IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11, whether or not such

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revenues, money, or property has been pledged by the issuer to secure these obligations.

(2) An issuer has no legal or equitable right to any revenues or other money or property that may thereafter be held, possessed, maintained, or controlled by, or otherwise in the custody of, the state or any other political subdivision, or any department, agency, or instrumentality thereof, under any other law and that would otherwise be available for distribution to the issuer, whether or not these revenues, money, or property has been pledged to secure the obligations, until:

- (A) any reduction permitted under IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11 has been applied; and
- (B) the revenues or other money or property has been distributed to and received by the issuer.

(3) An issuer is prohibited from consenting to or permitting, and may not be construed as consenting to or permitting, the use of any revenues or other money or property reduced under IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11 for any other purpose other than the purposes described in IC 5-1.5-8-5, IC 6-1.1-20.6-10, or IC 20-48-1-11, respectively.

(e) This section shall be liberally construed so that the state and any distressed political subdivision (as defined in IC 6-1.1-20.3-2) shall, to the extent legally permitted under Indiana law, ensure that all bonds, all lease rental payments, and all warrants of each distressed political subdivision are paid when due in accordance with the original terms thereof irrespective of any other state or federal law. However, this chapter may not be construed to create a debt of the state.

SECTION 2. IC 5-1-14-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17. (a) Notwithstanding any other law, the issuer of any obligation shall pay in full the principal of, interest on, and premium on, if any, the obligations in accordance with the terms of the obligations.

(b) Notwithstanding any other law, any issuer of an obligation is prohibited from consenting to or permitting, and may not be construed as consenting to or permitting, without the consent of one hundred percent (100%) of the owners of all obligations then outstanding:

- (1) an extension of the stated maturity or a reduction in the principal amount of, or a reduction in the rate or an extension

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- of the time of payment of interest on, any obligations;
- (2) the creation of any lien on the revenues or other money or property pledged to the obligations that is senior or prior to the lien upon the obligations;
- (3) a reduction in the aggregate principal amount of the obligations;
- (4) the granting of a privilege, priority, or preference to any of the obligations over any other of the obligations;
- (5) any amendment or modification of the powers, remedies, rights, duties, privileges, or immunities of the owners of the obligations.

(c) This section shall be liberally construed so that the state and any distressed political subdivision (as defined in IC 6-1.1-20.3-2) shall, to the extent legally permitted under Indiana law, ensure that all bonds, all lease rental payments, and all warrants of each distressed political subdivision are paid when due in accordance with the original terms thereof irrespective of any other state or federal law. However, this chapter may not be construed to create a debt of the state.

SECTION 3. IC 5-1-19 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 19. Property Held by the State

Sec. 1. Notwithstanding any other law, a political subdivision has no legal or equitable right to any revenues or other money or property held, possessed, maintained, controlled, or otherwise in the custody of the state or any department, agency, or instrumentality thereof, that would otherwise be available for distribution to the political subdivision, unless and until the revenues or other money or property has been distributed to and received by the political subdivision."

Page 2, line 34, delete "Either of the following may".

Page 2, delete lines 35 through 36.

Page 2, line 37, delete "(1)".

Page 2, line 37, reset in roman "a".

Page 2, line 37, after "distressed" delete "the".

Page 2, run in lines 34 through 37.

Page 2, line 40, delete "jointly." and insert "**may jointly file a petition with the board seeking to have the political subdivision designated as a distressed political subdivision under this chapter. However, if the political subdivision is a school corporation, the school board may file a petition under this chapter.**".

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Page 2, delete lines 41 through 42.

Page 3, delete lines 1 through 3.

Page 3, line 24, after "6.5" insert "**(a)**".

Page 3, line 34, delete "thirty (30)" and insert "**sixty (60)**".

Page 4, line 2, delete "in total".

Page 4, line 3, delete "governmental purpose funds".

Page 4, line 3, delete "five" and insert "**eight**".

Page 4, line 4, delete "(5%)" and insert "**(8%)**".

Page 4, line 4, delete "current year".

Page 4, line 4, after "revenues." insert "**For purposes of this subdivision, "deficit" means a negative fund balance calculated as a percentage of revenues at the end of a budget year for any governmental or proprietary fund. The calculation must be presented on an accrual basis according to generally accepted accounting principles.**".

Page 4, between lines 16 and 17, begin a new paragraph and insert:

"(b) If the board designates a political subdivision as distressed under subsection (a), the board shall review the designation annually to determine if the distressed political subdivision meets at least one (1) of the conditions listed in subsection (a).

(c) If the board designates a political subdivision as a distressed political subdivision under subsection (a), the board shall immediately notify:

- (1) the treasurer of state; and**
- (2) the county auditor and county treasurer of each county in which the distressed political subdivision is wholly or partially located;**

that the board has designated the political subdivision as a distressed political subdivision."

Page 4, line 21, delete "chairperson of the".

Page 4, between lines 26 and 27, begin a new paragraph and insert:

"(c) The distressed political subdivision shall pay the emergency fiscal manager's compensation and reimburse the emergency fiscal manager for actual and necessary expenses."

Page 4, line 36, after "resolutions" insert "**relating to or affecting the fiscal stability of the political subdivision**".

Page 4, line 37, after "taxes" insert "**or fees**".

Page 4, line 38, after "taxes" insert "**or fees**".

Page 5, line 4, after "subdivision" insert "**not later than six (6) months after appointment**".

Page 5, line 7, delete "Renegotiate" and insert "**Review**".

Page 5, line 7, delete "and act as an agent of" and insert ".".

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Page 5, delete line 8.

Page 5, line 20, delete "six (6)" and insert "three (3)".

Page 5, between lines 28 and 29, begin a new line block indented and insert:

"(13) Act on behalf of the distressed political subdivision if the distressed political subdivision is authorized under section 13(a)(2) of this chapter to file a petition under Chapter 9, Title 11 of the United States Code."

Page 5, between lines 30 and 31, begin a new line block indented and insert:

"(1) Renegotiate existing labor contracts and act as an agent of the political subdivision in collective bargaining."

Page 5, line 31, delete "(1)" and insert "(2)".

Page 5, line 33, delete "(2)" and insert "(3)".

Page 5, line 35, delete "(3)" and insert "(4)".

Page 5, between lines 41 and 42, begin a new paragraph and insert:

"SECTION 10. IC 6-1.1-20.3-10, AS ADDED BY P.L.146-2008, SECTION 209, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. A ~~distressed~~ political subdivision may petition the tax court for judicial review of a ~~final~~ determination of the board **under section 6.5 of this chapter**. The action must be taken to the tax court under IC 6-1.1-15 in the same manner that an action is taken to appeal a final determination of the Indiana board of tax review. The petition must be filed in the tax court not more than forty-five (45) days after the board enters its final determination."

Page 6, between lines 27 and 28, begin a new paragraph and insert:

"(c) Notwithstanding any other section of this chapter, not later than ninety (90) days after taking office, a new executive of a distressed political subdivision may petition the board for suspension of the political subdivision's distressed status. The executive must include in its petition a written plan to resolve the applicable issues described in section 6.5 of this chapter. If the board approves the executive's written plan, the board may suspend the political subdivision's distressed status for one hundred eighty (180) days. Suspension under this chapter terminates automatically upon expiration of the one hundred eighty (180) day period. The board may consider a petition to terminate the political subdivision's distressed status during a period of suspension."

Page 6, line 29, delete "; IC 6-1.1-20.3-10;" and insert ".".

Page 6, delete line 30, begin a new paragraph and insert:

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"SECTION 15. [EFFECTIVE JULY 1, 2011] (a) **Notwithstanding this act, the final determinations of the existing distressed unit appeal board remain in effect until the final settlement of the 2011 Lake County property tax bills.**

(b) This SECTION expires December 31, 2013."

Page 6, delete line 31.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 105 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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