



Reprinted
February 8, 2011

SENATE BILL No. 105

DIGEST OF SB 105 (Updated February 7, 2011 4:16 pm - DI 106)

Citations Affected: IC 5-1; IC 5-1.5; IC 6-1.1; IC 20-48; 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.
February 7, 2011, read second time, amended, ordered engrossed.

SB 105—LS 6395/DI 113+



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First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 105

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

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

1 SECTION 1. IC 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

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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 5-1.5-8-5.1, 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 5-1.5-8-5.1, 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 5-1.5-8-5.1, IC 6-1.1-20.6-10, or IC 20-48-1-11 for any other purpose other than the purposes described in IC 5-1.5-8-5.1, 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

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1 **distressed political subdivision are paid when due in accordance**
2 **with the original terms thereof irrespective of any other state or**
3 **federal law. However, this chapter may not be construed to create**
4 **a debt of the state.**

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

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

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

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

37 SECTION 3. IC 5-1-19 IS ADDED TO THE INDIANA CODE AS
38 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2011]:

40 **Chapter 19. Property Held by the State**

41 **Sec. 1. Notwithstanding any other law, a political subdivision**
42 **has no legal or equitable right to any revenues or other money or**

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

7 SECTION 4. IC 5-1.5-8-5.1 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2011]: **Sec. 5.1. (a)** Upon receiving notice from the bank that a
10 qualified entity has failed to pay the principal or interest on the
11 securities of the qualified entity then held or owned by or arising
12 from an agreement with the bank when due, the treasurer of the
13 state shall:

14 (1) reduce the amount of any revenues or other money or
15 property held, possessed, maintained or controlled by, or
16 otherwise in the custody of, the state, or any department,
17 agency or instrumentality thereof, which would otherwise be
18 available for distribution to the qualified entity under any
19 other law, by an amount equal to the amount of the qualified
20 entity’s unpaid securities;

21 (2) pay the amount by which the revenues or other money or
22 property are reduced under subdivision (1) to the bank for the
23 purpose of paying principal of and interest on bonds or other
24 obligations of the bank; and

25 (3) notify the qualified entity that these revenues or other
26 money or property, which would otherwise be available for
27 distribution to the qualified entity, have been reduced by an
28 amount necessary to satisfy all or a portion of the qualified
29 entity’s unpaid securities to the bank.

30 (b) A reduction under subsection (a) must be made:

31 (1) first, from distributions of county adjusted gross income
32 tax distributions under IC 6-3.5-1.1, county option income tax
33 distributions under IC 6-3.5-6, or county economic
34 development income tax distributions under IC 6-3.5-7 that
35 would otherwise be distributed to the county under the
36 schedule in IC 6-3.5-1.1-10, IC 6-3.5-1.1-21.1, IC 6-3.5-6-16,
37 IC 6-3.5-6-17.3, IC 6-3.5-7-17, and IC 6-3.5-7-17.3; and

38 (2) second, from any other revenues or other money or
39 property held, possessed, maintained or controlled by, or
40 otherwise in the custody of, the state, or any department,
41 agency or instrumentality of the state, which would otherwise
42 be available for distribution to the qualified entity under any

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other law.
(c) Any reductions under subsection (a) may be used only for the purpose of paying principal of and interest on the debt service obligations of the qualified entity which the qualified entity has failed to pay to the bank and for no other purpose.

(d) Notwithstanding any other law, a qualified entity 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 political subdivision, or any department, agency, or instrumentality of the state, that would otherwise be available for distribution to the qualified entity, until:

(1) any reduction permitted under this section have been applied; and

(2) the revenues or other money or property have been distributed to and received by the qualified entity.

(e) However, the reduction of payment from the qualified entity and payment to the bank under this section may not adversely affect the validity of the security in default.

(f) This section shall be interpreted liberally so that the state shall, to the extent permitted by law, ensure that the debt service obligations of each qualified entity are paid when due. However, this section does not create a debt of the state or any political subdivision.

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

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

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

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

(2) The commissioner of the department of local government

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1 finance or the commissioner's designee.
 2 (3) The commissioner of the department of state revenue or the
 3 commissioner's designee.
 4 (4) (3) The state examiner of the state board of accounts or the
 5 state examiner's designee.
 6 (5) The following members appointed by the governor:
 7 (A) One (1) member appointed from nominees submitted by
 8 the Indiana Association of Cities and Towns:
 9 (B) One (1) member appointed from nominees submitted by
 10 the Association of Indiana Counties:
 11 (C) One (1) member appointed from nominees submitted by
 12 the Indiana Association of School Superintendents:
 13 A member nominated and appointed under this subdivision must
 14 be an elected official of a political subdivision.
 15 (6) One (1) member appointed by the governor (in addition to
 16 members appointed under subdivision (5)).
 17 (7) One (1) member appointed by the speaker of the house of
 18 representatives. A member appointed under this subdivision
 19 serves a term of four (4) years.
 20 (c) The members appointed under subsection (b)(5) and subsection
 21 (b)(6) serve at the pleasure of the governor.
 22 (d) (c) Each member of the commission is entitled to reimbursement
 23 for:
 24 (1) traveling expenses as provided under IC 4-13-1-4; and
 25 (2) other expenses actually incurred in connection with the
 26 member's duties as provided in the state policies and procedures
 27 established by the Indiana department of administration and
 28 approved by the budget agency.
 29 SECTION 7. IC 6-1.1-20.3-6, AS AMENDED BY P.L.146-2008,
 30 SECTION 205, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) For property taxes first due
 32 and payable in 2008 and thereafter, The fiscal body **and the executive**
 33 of a distressed political subdivision may petition the board for relief as
 34 authorized under this chapter from the application of the credit under
 35 IC 6-1.1-20.6 for a calendar year. **may jointly file a petition with the**
 36 **board seeking to have the political subdivision designated as a**
 37 **distressed political subdivision under this chapter. However, if the**
 38 **political subdivision is a school corporation, the school board may**
 39 **file a petition under this chapter.**
 40 (b) A petition under subsection (a) must include a proposed
 41 financial plan for the distressed political subdivision. The proposed
 42 financial plan must include the following:

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- 1 (1) Proposed budgets that would enable the distressed political
- 2 subdivision to cease being a distressed political subdivision.
- 3 (2) Proposed efficiencies, consolidations, cost reductions, uses of
- 4 alternative or additional revenues, or other actions that would
- 5 enable the distressed political subdivision to cease being a
- 6 distressed political subdivision.
- 7 (3) Proposed increases, if any, in the percentage thresholds
- 8 (specified as a percentage of gross assessed value) at which the
- 9 credit under IC 6-1.1-20.6 will apply, including any varying
- 10 percentages for different classes of property.
- 11 (4) Proposed reductions, if any, to the credits under IC 6-1.1-20.6
- 12 (by percentages), including any varying percentage reductions for
- 13 different classes of property.

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

16 SECTION 8. IC 6-1.1-20.3-6.5 IS ADDED TO THE INDIANA
 17 CODE AS A NEW SECTION TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2011]: **Sec. 6.5. (a) After the board receives**
 19 **a petition concerning a political subdivision under section 6 of this**
 20 **chapter, the board may designate the political subdivision as a**
 21 **distressed political subdivision if at least one (1) of the following**
 22 **conditions applies to the political subdivision:**

- 23 (1) The political subdivision has defaulted in payment of
- 24 principal or interest on any of its bonds or notes.
- 25 (2) The political subdivision has missed a payroll for thirty
- 26 (30) days or two (2) consecutive payrolls.
- 27 (3) The political subdivision has failed to make required
- 28 payments to judgment creditors for sixty (60) days beyond the
- 29 date of the recording of the judgment.
- 30 (4) The political subdivision, for at least thirty (30) days
- 31 beyond the due date, has failed to do any of the following:
- 32 (A) Forward taxes withheld on the incomes of employees.
- 33 (B) Failed to transfer employer or employee contributions
- 34 due under the Federal Insurance Contributions Act
- 35 (FICA).
- 36 (C) Failed to deposit its minimum obligation payment to a
- 37 pension fund.
- 38 (5) The political subdivision has accumulated a deficit equal
- 39 to eight percent (8%) or more of its revenues. For purposes of
- 40 this subdivision, "deficit" means a negative fund balance
- 41 calculated as a percentage of revenues at the end of a budget
- 42 year for any governmental or proprietary fund. The

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calculation must be presented on an accrual basis according to generally accepted accounting principles.

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

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

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

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

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

(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.

SECTION 9. IC 6-1.1-20.3-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 7.5. (a) If the board designates a political subdivision as a distressed political subdivision under section 6.5 of this chapter, the board shall appoint an emergency manager for the distressed political subdivision. An emergency manager serves at the pleasure of the board.**

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

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

SECTION 10. IC 6-1.1-20.3-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 8.5. (a) Notwithstanding any**

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other law, an emergency manager of a distressed political subdivision appointed under section 7.5 of this chapter shall do the following:

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

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1 (13) Act on behalf of the distressed political subdivision if the
2 distressed political subdivision is authorized under section
3 13(a)(2) of this chapter to file a petition under Chapter 9, Title
4 11 of the United States Code.

5 (b) An emergency manager of a distressed political subdivision
6 appointed under section 7.5 of this chapter may do the following:

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

9 (2) Reduce or suspend salaries of the political subdivision's
10 employees.

11 (3) Enter into agreements with other political subdivisions for
12 the provision of services.

13 (4) Recommend to the board that the distressed political
14 subdivision seek bankruptcy protection under Chapter 9 of
15 Title 11 of the United States Code.

16 (c) An emergency manager of a distressed political subdivision
17 retains the powers and duties described in subsections (a) and (b)
18 until the political subdivision's status as a distressed political
19 subdivision is terminated under section 14 of this chapter.

20 SECTION 11. IC 6-1.1-20.3-10, AS ADDED BY P.L.146-2008,
21 SECTION 209, IS AMENDED TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2011]: Sec. 10. A ~~distressed~~ political
23 subdivision may petition the tax court for judicial review of a ~~final~~
24 determination of the board **under section 6.5 of this chapter**. The
25 action must be taken to the tax court under IC 6-1.1-15 in the same
26 manner that an action is taken to appeal a final determination of the
27 Indiana board of tax review. The petition must be filed in the tax court
28 not more than forty-five (45) days after the board enters its final
29 determination.

30 SECTION 12. IC 6-1.1-20.3-13 IS ADDED TO THE INDIANA
31 CODE AS A NEW SECTION TO READ AS FOLLOWS
32 [EFFECTIVE JULY 1, 2011]: **Sec. 13. (a) The board, as a state
33 governmental entity supervising a distressed political subdivision:**

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

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

40 SECTION 13. IC 6-1.1-20.3-14 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2011]: **Sec. 14. (a) If:**

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1 (1) an emergency manager of a distressed political
 2 subdivision; or
 3 (2) the petitioner who moved for designation of the political
 4 subdivision as a distressed political subdivision under section
 5 6 of this chapter;
 6 files a petition with the board for termination of the political
 7 subdivision's status as a distressed political subdivision, the board
 8 shall conduct a public hearing on the question of whether to
 9 terminate control of the distressed political subdivision.

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

- 12 (1) the conditions found in section 6.5 of this chapter are no
- 13 longer applicable to the political subdivision; and
- 14 (2) the political subdivision's bankruptcy proceedings, if any,
- 15 have concluded.

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

29 SECTION 14. IC 6-1.1-20.6-10, AS ADDED BY P.L.146-2008,
 30 SECTION 226, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) As used in this section,
 32 "debt service obligations of a political subdivision" refers to:

- 33 (1) the principal and interest payable during a calendar year on
- 34 bonds, **notes, or warrants**; and
- 35 (2) lease rental payments payable during a calendar year on
- 36 leases;

37 of a political subdivision payable from ad valorem property taxes.

38 (b) Political subdivisions are required by law to fully fund the
 39 payment of their debt obligations in an amount sufficient to pay any
 40 debt service or lease rentals on outstanding obligations, regardless of
 41 any reduction in property tax collections due to the application of tax
 42 credits granted under this chapter. Any reduction in collections must

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1 be applied to the other funds of the political subdivision after debt
2 service or lease rentals have been fully funded.

3 (c) Upon the failure of a political subdivision to pay any of the
4 political subdivision's debt service obligations during a calendar year
5 when due, the treasurer of state, upon being notified of the failure by
6 a claimant, shall pay the unpaid debt service obligations that are due
7 from money in the possession of the state that would otherwise be
8 available for distribution to the political subdivision under any other
9 law, deducting the payment from the amount distributed. A deduction
10 under this subsection must be made:

11 (1) first from distributions of county adjusted gross income tax
12 distributions under IC 6-3.5-1.1; county option income tax
13 distributions under IC 6-3.5-6; or county economic development
14 income tax distributions under IC 6-3.5-7 that would otherwise be
15 distributed to the county under the schedule in IC 6-3.5-1.1-10;
16 IC 6-3.5-1.1-21.1; IC 6-3.5-6-16; IC 6-3.5-6-17.3; IC 6-3.5-7-17;
17 and IC 6-3.5-7-17.3; and

18 (2) second from any other undistributed funds of the political
19 subdivision in the possession of the state.

20 (c) Upon receiving notice from any creditor that a political
21 subdivision has failed to pay any of the political subdivision's debt
22 service obligations during a calendar year when due, the treasurer
23 of the state shall:

24 (1) reduce the amount of any revenues or other money or
25 property held, possessed, maintained or controlled by, or
26 otherwise in the custody of, the state, or any department,
27 agency, or instrumentality of the state, which would otherwise
28 be available for distribution to the political subdivision under
29 any other law, by an amount equal to the amount of the
30 political subdivision's unpaid debt service obligations;

31 (2) pay the amount by which these revenues or other money
32 or property are reduced under subdivision (1) to the creditor;
33 and

34 (3) notify the political subdivision that the revenues or other
35 money or property, which would otherwise be available for
36 distribution to the political subdivision, have been reduced by
37 an amount necessary to satisfy all or a portion of the political
38 subdivision's unpaid debt service obligations.

39 (d) A reduction under subsection (c) must be made:

40 (1) first, from distributions of county adjusted gross income
41 tax distributions under IC 6-3.5-1.1, county option income tax
42 distributions under IC 6-3.5-6, or county economic

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1 development income tax distributions under IC 6-3.5-7 that
 2 would otherwise be distributed to the county under the
 3 schedule in IC 6-3.5-1.1-10, IC 6-3.5-1.1-21.1, IC 6-3.5-6-16,
 4 IC 6-3.5-6-17.3, IC 6-3.5-7-17, and IC 6-3.5-7-17.3; and
 5 (2) second, from any other revenues or other money or
 6 property held, possessed, maintained or controlled by, or
 7 otherwise in the custody of, the state, or any department,
 8 agency or instrumentality thereof, which would otherwise be
 9 available for distribution to the political subdivision under
 10 any other law.

11 (e) Any reductions under subsection (c) must be used only for
 12 the purpose of paying principal of and interest on the debt service
 13 obligations of the political subdivision which the political
 14 subdivision has failed to pay and for no other purpose.

15 (f) Notwithstanding any other law, a political subdivision has no
 16 legal or equitable right to any revenues or other money or property
 17 held, possessed, maintained, controlled or otherwise in the custody
 18 of the state or any political subdivision, or any department, agency,
 19 or instrumentality of the state, that would otherwise be available
 20 for distribution to the political subdivision, until:

- 21 (1) any reduction permitted under the provisions of this
- 22 section have been applied; and
- 23 (2) the revenues or other money or property have been
- 24 distributed to and received by the political subdivision.

25 (†) (g) This section shall be interpreted liberally so that the state
 26 shall to the extent ~~legally valid~~ **permitted by law** ensure that the debt
 27 service obligations of each political subdivision are paid when due.
 28 However, this section does not create a debt of the state or any
 29 political subdivision.

30 (h) Notwithstanding this section, the payment of any reduction
 31 under subsection (c) to a creditor may not adversely affect the
 32 validity of the debt service obligations with respect to which the
 33 creditor has notified the treasurer of the state under this section.

34 SECTION 15. IC 20-48-1-11, AS AMENDED BY P.L.146-2008,
 35 SECTION 525, IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) As used in this section,
 37 "debt service obligations" refers to the principal and interest payable
 38 during a calendar year on a school corporation's general obligation
 39 bonds under IC 20-48-1-1, IC 20-48-1-2, and a school corporation's
 40 lease rentals under IC 20-47-2 and IC 20-47-3, and a school
 41 corporations tax anticipation warrants under IC 30-48-1-9.

42 (b) Before the end of each calendar year, the department of local

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1 government finance shall review the bond and lease rental levies, or
2 any levies that replace bond and lease rental levies, of each school
3 corporation that are payable in the next succeeding year and the
4 appropriations from the levies from which the school corporation is to
5 pay the amount, if any, of the school corporation's debt service
6 obligations. If the levies and appropriations of the school corporation
7 are not sufficient to pay the debt service obligations, the department of
8 local government finance shall establish for each school corporation:

9 (1) bond or lease rental levies, or any levies that replace the bond
10 and lease rental levies; and

11 (2) appropriations;
12 that are sufficient to pay the debt service obligations.

13 (c) Upon the failure of a school corporation to pay any of the school
14 corporation's debt service obligations during a calendar year when due,
15 the treasurer of state, upon being notified of the failure by a claimant,
16 shall pay the unpaid debt service obligations that are due from the
17 funds of the state only to the extent of the amounts appropriated by the
18 general assembly for the calendar year for distribution to the school
19 corporation from state funds, deducting the payment from the
20 appropriated amounts. A deduction under this subsection must be
21 made:

22 (1) first from all funds except state tuition support; and

23 (2) second from state tuition support.

24 (c) Upon receiving notice from any creditor that a school
25 corporation has failed to pay any of the political subdivision's debt
26 service obligations during a calendar year when due, the treasurer
27 of the state shall:

28 (1) reduce the amount of any revenues or other moneys or
29 property held, possessed, maintained or controlled by, or
30 otherwise in the custody of, the state, or any department,
31 agency or instrumentality of the state, which would otherwise
32 be available for distribution to the school corporation under
33 any other law, by an amount equal to the amount of the school
34 corporation's unpaid debt service obligations;

35 (2) pay the amount by which these revenues or other moneys
36 or property are reduced under subdivision (1) to the creditor;
37 and

38 (3) notify the school corporation that the revenues or other
39 moneys or property, which would otherwise be available for
40 distribution to the school corporation, have been reduced by
41 an amount necessary to satisfy all or a portion of the school
42 corporation's unpaid debt service obligations.

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(d) A reduction under subsection (c) must be made:

- (1) first, from any revenues or other moneys or property held, possessed, maintained or controlled by, or otherwise in the custody of, the state, or any department, agency or instrumentality of the state, which would otherwise be available for distribution to the school corporation under any other law, except state tuition support; and**
- (2) second from state tuition support.**

(e) Any reductions under subsection (c) may be used only for the purpose of paying principal of and interest on the debt service obligations of the school corporation which the school corporation has failed to pay and for no other purpose.

(f) Notwithstanding any other law, a school corporation 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 political subdivision, or any department, agency or instrumentality of the state, that would otherwise be available for distribution to the school corporation, until:

- (1) any reduction permitted under the provisions of this section have been applied; and**
- (2) the revenues or other money or property have been distributed to and received by the school corporation.**

~~(d)~~ **(g) This section shall be interpreted liberally so that the state shall to the extent legally valid permitted by law ensure that the debt service obligations of each school corporation are paid. However, this section does not create a debt of the state or any political subdivision.**

(h) Notwithstanding this section, the payment of any reduction under subsection (c) to a creditor may not adversely affect the validity of the debt service obligations with respect to which the creditor has notified the treasurer of the state pursuant to this section.

SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2011]: IC 5-1.5-8-5; IC 6-1.1-20.3-7; IC 6-1.1-20.3-8.

SECTION 17. [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.

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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.

SENATE MOTION

Madam President: I move that Senate Bill 105 be amended to read as follows:

Page 3, line 15, delete "IC 5-1.5-8-5" and insert "**IC 5-1.5-8-5.1**".

Page 3, line 28, delete "IC 5-1.5-8-5" and insert "**IC 5-1.5-8-5.1**".

Page 3, line 35, delete "IC 5-1.5-8-5" and insert "**IC 5-1.5-8-5.1**".

Page 3, line 37, delete "IC 5-1.5-8-5" and insert "**IC 5-1.5-8-5.1**".

Page 5, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 4. IC 5-1.5-8-5.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5.1. (a) Upon receiving notice from the bank that a qualified entity has failed to pay the principal or interest on the securities of the qualified entity then held or owned by or arising from an agreement with the bank when due, the treasurer of the state shall:**

(1) reduce the amount of any revenues or other money or property held, possessed, maintained or controlled by, or otherwise in the custody of, the state, or any department, agency or instrumentality thereof, which would otherwise be available for distribution to the qualified entity under any other law, by an amount equal to the amount of the qualified entity's unpaid securities;

(2) pay the amount by which the revenues or other money or property are reduced under subdivision (1) to the bank for the purpose of paying principal of and interest on bonds or other obligations of the bank; and



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(3) notify the qualified entity that these revenues or other money or property, which would otherwise be available for distribution to the qualified entity, have been reduced by an amount necessary to satisfy all or a portion of the qualified entity's unpaid securities to the bank.

(b) A reduction under subsection (a) must be made:

(1) first, from distributions of county adjusted gross income tax distributions under IC 6-3.5-1.1, county option income tax distributions under IC 6-3.5-6, or county economic development income tax distributions under IC 6-3.5-7 that would otherwise be distributed to the county under the schedule in IC 6-3.5-1.1-10, IC 6-3.5-1.1-21.1, IC 6-3.5-6-16, IC 6-3.5-6-17.3, IC 6-3.5-7-17, and IC 6-3.5-7-17.3; and

(2) second, from any other revenues or other money or property held, possessed, maintained or controlled by, or otherwise in the custody of, the state, or any department, agency or instrumentality of the state, which would otherwise be available for distribution to the qualified entity under any other law.

(c) Any reductions under subsection (a) may be used only for the purpose of paying principal of and interest on the debt service obligations of the qualified entity which the qualified entity has failed to pay to the bank and for no other purpose.

(d) Notwithstanding any other law, a qualified entity 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 political subdivision, or any department, agency, or instrumentality of the state, that would otherwise be available for distribution to the qualified entity, until:

(1) any reduction permitted under this section have been applied; and

(2) the revenues or other money or property have been distributed to and received by the qualified entity.

(e) However, the reduction of payment from the qualified entity and payment to the bank under this section may not adversely affect the validity of the security in default.

(f) This section shall be interpreted liberally so that the state shall, to the extent permitted by law, ensure that the debt service obligations of each qualified entity are paid when due. However, this section does not create a debt of the state or any political subdivision."

Page 11, between lines 10 and 11, begin a new paragraph and insert:

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"SECTION 14. IC 6-1.1-20.6-10, AS ADDED BY P.L.146-2008, SECTION 226, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) As used in this section, "debt service obligations of a political subdivision" refers to:

- (1) the principal and interest payable during a calendar year on bonds, **notes, or warrants**; and
- (2) lease rental payments payable during a calendar year on leases;

of a political subdivision payable from ad valorem property taxes.

(b) Political subdivisions are required by law to fully fund the payment of their debt obligations in an amount sufficient to pay any debt service or lease rentals on outstanding obligations, regardless of any reduction in property tax collections due to the application of tax credits granted under this chapter. Any reduction in collections must be applied to the other funds of the political subdivision after debt service or lease rentals have been fully funded.

(c) Upon the failure of a political subdivision to pay any of the political subdivision's debt service obligations during a calendar year when due, the treasurer of state, upon being notified of the failure by a claimant, shall pay the unpaid debt service obligations that are due from money in the possession of the state that would otherwise be available for distribution to the political subdivision under any other law, deducting the payment from the amount distributed. A deduction under this subsection must be made:

- (1) first from distributions of county adjusted gross income tax distributions under IC 6-3.5-1.1; county option income tax distributions under IC 6-3.5-6; or county economic development income tax distributions under IC 6-3.5-7 that would otherwise be distributed to the county under the schedule in IC 6-3.5-1.1-10; IC 6-3.5-1.1-21.1; IC 6-3.5-6-16; IC 6-3.5-6-17.3; IC 6-3.5-7-17; and IC 6-3.5-7-17.3; and
- (2) second from any other undistributed funds of the political subdivision in the possession of the state.

(c) Upon receiving notice from any creditor that a political subdivision has failed to pay any of the political subdivision's debt service obligations during a calendar year when due, the treasurer of the state shall:

- (1) reduce the amount of any revenues or other money or property held, possessed, maintained or controlled by, or otherwise in the custody of, the state, or any department, agency, or instrumentality of the state, which would otherwise be available for distribution to the political subdivision under

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any other law, by an amount equal to the amount of the political subdivision's unpaid debt service obligations;

(2) pay the amount by which these revenues or other money or property are reduced under subdivision (1) to the creditor; and

(3) notify the political subdivision that the revenues or other money or property, which would otherwise be available for distribution to the political subdivision, have been reduced by an amount necessary to satisfy all or a portion of the political subdivision's unpaid debt service obligations.

(d) A reduction under subsection (c) must be made:

(1) first, from distributions of county adjusted gross income tax distributions under IC 6-3.5-1.1, county option income tax distributions under IC 6-3.5-6, or county economic development income tax distributions under IC 6-3.5-7 that would otherwise be distributed to the county under the schedule in IC 6-3.5-1.1-10, IC 6-3.5-1.1-21.1, IC 6-3.5-6-16, IC 6-3.5-6-17.3, IC 6-3.5-7-17, and IC 6-3.5-7-17.3; and

(2) second, from any other revenues or other money or property held, possessed, maintained or controlled by, or otherwise in the custody of, the state, or any department, agency or instrumentality thereof, which would otherwise be available for distribution to the political subdivision under any other law.

(e) Any reductions under subsection (c) must be used only for the purpose of paying principal of and interest on the debt service obligations of the political subdivision which the political subdivision has failed to pay and for no other purpose.

(f) 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 political subdivision, or any department, agency, or instrumentality of the state, that would otherwise be available for distribution to the political subdivision, until:

(1) any reduction permitted under the provisions of this section have been applied; and

(2) the revenues or other money or property have been distributed to and received by the political subdivision.

(g) This section shall be interpreted liberally so that the state shall to the extent ~~legally valid~~ **permitted by law** ensure that the debt service obligations of each political subdivision are paid when due. However, this section does not create a debt of the state or any

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political subdivision.

(h) Notwithstanding this section, the payment of any reduction under subsection (c) to a creditor may not adversely affect the validity of the debt service obligations with respect to which the creditor has notified the treasurer of the state under this section.

SECTION 15. IC 20-48-1-11, AS AMENDED BY P.L.146-2008, SECTION 525, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) As used in this section, "debt service obligations" refers to the principal and interest payable during a calendar year on a school corporation's general obligation bonds **under IC 20-48-1-1, IC 20-48-1-2, and a school corporation's lease rentals under IC 20-47-2 and IC 20-47-3, and a school corporations tax anticipation warrants under IC 30-48-1-9.**

(b) Before the end of each calendar year, the department of local government finance shall review the bond and lease rental levies, or any levies that replace bond and lease rental levies, of each school corporation that are payable in the next succeeding year and the appropriations from the levies from which the school corporation is to pay the amount, if any, of the school corporation's debt service obligations. If the levies and appropriations of the school corporation are not sufficient to pay the debt service obligations, the department of local government finance shall establish for each school corporation:

- (1) bond or lease rental levies, or any levies that replace the bond and lease rental levies; and
- (2) appropriations;

that are sufficient to pay the debt service obligations.

(c) Upon the failure of a school corporation to pay any of the school corporation's debt service obligations during a calendar year when due, the treasurer of state, upon being notified of the failure by a claimant, shall pay the unpaid debt service obligations that are due from the funds of the state only to the extent of the amounts appropriated by the general assembly for the calendar year for distribution to the school corporation from state funds, deducting the payment from the appropriated amounts. A deduction under this subsection must be made:

- (1) first from all funds except state tuition support; and
- (2) second from state tuition support.

(c) Upon receiving notice from any creditor that a school corporation has failed to pay any of the political subdivision's debt service obligations during a calendar year when due, the treasurer of the state shall:

- (1) reduce the amount of any revenues or other moneys or**

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property held, possessed, maintained or controlled by, or otherwise in the custody of, the state, or any department, agency or instrumentality of the state, which would otherwise be available for distribution to the school corporation under any other law, by an amount equal to the amount of the school corporation's unpaid debt service obligations;

(2) pay the amount by which these revenues or other moneys or property are reduced under subdivision (1) to the creditor; and

(3) notify the school corporation that the revenues or other moneys or property, which would otherwise be available for distribution to the school corporation, have been reduced by an amount necessary to satisfy all or a portion of the school corporation's unpaid debt service obligations.

(d) A reduction under subsection (c) must be made:

(1) first, from any revenues or other moneys or property held, possessed, maintained or controlled by, or otherwise in the custody of, the state, or any department, agency or instrumentality of the state, which would otherwise be available for distribution to the school corporation under any other law, except state tuition support; and

(2) second from state tuition support.

(e) Any reductions under subsection (c) may be used only for the purpose of paying principal of and interest on the debt service obligations of the school corporation which the school corporation has failed to pay and for no other purpose.

(f) Notwithstanding any other law, a school corporation 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 political subdivision, or any department, agency or instrumentality of the state, that would otherwise be available for distribution to the school corporation, until:

(1) any reduction permitted under the provisions of this section have been applied; and

(2) the revenues or other money or property have been distributed to and received by the school corporation.

(g) This section shall be interpreted liberally so that the state shall to the extent ~~legally valid~~ **permitted by law** ensure that the debt service obligations of each school corporation are paid. However, this section does not create a debt of the state or any political subdivision.

(h) Notwithstanding this section, the payment of any reduction under subsection (c) to a creditor may not adversely affect the

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validity of the debt service obligations with respect to which the creditor has notified the treasurer of the state pursuant to this section."

Page 11, line 12, after "2011]:" insert "**IC 5-1.5-8-5**";

Renumber all SECTIONS consecutively.

(Reference is to SB 105 as printed January 28, 2011.)

CHARBONNEAU

SENATE MOTION

Madam President: I move that Senate Bill 105 be amended to read as follows:

Page 8, line 17, delete "**may**" and insert "**shall**".

(Reference is to SB 105 as printed January 28, 2011.)

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