February 15, 2012

ENGROSSED
HOUSE BILL No. 1141

DIGEST OF HB 1141 (Updated February 14, 2012 11:14 am - DI 58)

Citations Affected: IC 4-12; IC 6-2.5.

Synopsis: Home energy assistance. Sunsets the sales tax exemption for home energy acquired through federal low income home energy assistance program (LIHEAP) after June 30, 2012, and before July 1, in 2020. Establishes the mortgage foreclosure multistate settlement fund. Provides that the fund consists of: (1) money that is received by the state under a multistate agreement related to litigation concerning mortgage foreclosure activities and that is designated by the attorney general for deposit in the fund; (2) appropriations made to the fund by the general assembly; and (3) grants, gifts, and donations intended for deposit in the fund. Specifies that the fund shall be administered by the budget agency, and that money in the fund does not revert to the state general fund. Provides that money in the fund may be used only to reimburse the state general fund for the amount of state sales tax revenue that was not collected because of the sales tax exemption for home energy acquired through LIHEAP.

Effective: Upon passage; July 1, 2012.

Welch, Clere, Day, Truitt

(SENATE SPONSORS — KENLEY, SIMPSON, BRODEN, ALTING, BREAUX, RANDOLPH)

January 9, 2012, read first time and referred to Committee on Ways and Means.
January 25, 2012, amended, reported — Do Pass.
January 27, 2012, read second time, ordered engrossed. Engrossed.
January 30, 2012, read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 1, 2012, read first time and referred to Committee on Tax and Fiscal Policy.
February 14, 2012, amended, reported favorably — Do Pass.

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February 15, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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ENGROSSED
HOUSE BILL No. 1141

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

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

SECTION 1. IC 4-12-1-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 14.5. (a) The mortgage foreclosure multistate settlement fund is established for the purpose of depositing and distributing money received under a multistate agreement related to litigation concerning mortgage foreclosure activities by creditors and mortgage servicers. The fund consists of:**

(1) money that:

(A) is received by the state under the multistate agreement related to litigation concerning mortgage foreclosure activities; and

(B) is designated by the attorney general for deposit in the fund;

(2) appropriations made to the fund by the general assembly; and

(3) grants, gifts, and donations intended for deposit in the fund.

(b) The fund shall be administered by the budget agency. Notwithstanding IC 5-13, the treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as money is invested by the public employees retirement fund under IC 5-10.3-5. The treasurer of state may contract with investment management professionals, investment advisors, and legal counsel to assist in the investment of the fund and may pay the state expenses incurred under those contracts from the fund. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of the state fiscal year does not revert to the state general fund.

(c) Money in the fund may be used only to make transfers to the state general fund under subsection (d).

(d) Not later than September 1 of each year, the department of state revenue shall certify to the budget agency and the auditor of state the additional amount of gross retail tax revenue that would have been collected in the preceding state fiscal year if the exemption under IC 6-2.5-5-16.5(b) for home energy acquired through home energy assistance had not been in effect during that preceding state fiscal year. The auditor of state shall, before September 1 of each year, transfer from the fund to the state general fund an amount equal to the lesser of:

(1) the amount certified by the department of state revenue under this subsection; or

(2) the balance in the fund.

(e) The state general fund is not liable for payment of a shortfall in expenditures, transfers, or distributions from the fund or any other fund due to a delay, reduction, or cancellation of payments scheduled to be received by the state under the multistate agreement related to litigation concerning mortgage foreclosure activities.

SECTION 2. IC 6-2.5-4-5, AS AMENDED BY P.L.32-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

(b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or

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domestic consumption.

(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction in any of the following transactions:

(1) The power subsidiary or person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the services or commodities listed in subsection (b).

(2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter.

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

(4) The power subsidiary or person sells the services or commodities listed in subsection (b) and all the following conditions are satisfied:

(A) The services or commodities are sold to a business that after June 30, 2004:

(i) relocates all or part of its operations to a facility; or

(ii) expands all or part of its operations in a facility;

located in a military base (as defined in IC 36-7-30-1(c)), a military base reuse area established under IC 36-7-30, the part of an economic development area established under IC 36-7-14.5-12.5 that is or formerly was a military base (as defined in IC 36-7-30-1(c)), a military base recovery site designated under IC 6-3.1-11.5, or a qualified military base enhancement area established under IC 36-7-34.

(B) The business uses the services or commodities in the facility described in clause (A) not later than five (5) years after the operations that are relocated to the facility or expanded in the facility commence.

(C) The sales of the services or commodities are separately

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metered for use by the relocated or expanded operations.

(D) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(1), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).

(ii) The business is a United States Department of Defense contractor.

(iii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the United States Department of Defense.

(E) In the case of a business that uses the services or commodities in a qualified military base enhancement area established under IC 36-7-34-4(2), the business must satisfy at least one (1) of the following criteria:

(i) The business is a participant in the technology transfer program conducted by the qualified military base (as defined in IC 36-7-34-3).

(ii) The business and the qualified military base have a mutually beneficial relationship evidenced by a memorandum of understanding between the business and the qualified military base (as defined in IC 36-7-34-3).

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

(5) The power subsidiary or person sells services or commodities that:

(A) are referred to in subsection (b); and

(B) qualify as home energy (as defined in IC 6-2.5-5-16.5);

to a person who acquires the services or commodities after June 30, ~~2006,~~ **2012,** and before July 1, ~~2009,~~ **2020,** through home energy assistance (as defined in IC 6-2.5-5-16.5).

SECTION 3. IC 6-2.5-5-16.5, AS AMENDED BY P.L.32-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16.5. (a) The following definitions apply

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throughout this section:

(1) "Home energy" means electricity, oil, gas, coal, propane, or any other fuel for use as the principal source of heating or cooling in residential dwellings.

(2) "Home energy assistance" means programs administered by the state to supply home energy through the Low Income Home Energy Assistance Block Grant under 42 U.S.C. ~~8261~~ **8621** et seq.

(b) Transactions involving home energy are exempt from the state gross retail tax if the person acquiring the home energy acquires it after June 30, ~~2006,~~ **2012,** and before July 1, ~~2009,~~ **2020,** through home energy assistance.

SECTION 4. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1141, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

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

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 22.

Page 4, line 29, after "2006," insert "**2012,**".

Page 4, line 29, reset in roman "and before July 1,".

Page 4, line 29, delete "2012," and insert "**2013,**".

Page 5, line 1, after "2006," insert "**2012,**".

Page 5, line 1, reset in roman "and before July 1,".

Page 5, line 1, delete "2012," and insert "**2013,**".

Page 5, delete lines 3 through 27.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1141 as introduced.)

ESPICH, Chair

Committee Vote: yeas 20, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred House Bill No. 1141, 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:

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

"SECTION 1. IC 4-12-1-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 14.5. (a) The mortgage foreclosure multistate settlement fund is established for the purpose of depositing and distributing money received under a multistate agreement related to litigation concerning mortgage foreclosure activities by creditors and mortgage servicers. The**

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fund consists of:

(1) money that:

(A) is received by the state under the multistate agreement related to litigation concerning mortgage foreclosure activities; and

(B) is designated by the attorney general for deposit in the fund;

(2) appropriations made to the fund by the general assembly; and

(3) grants, gifts, and donations intended for deposit in the fund.

(b) The fund shall be administered by the budget agency. Notwithstanding IC 5-13, the treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as money is invested by the public employees retirement fund under IC 5-10.3-5. The treasurer of state may contract with investment management professionals, investment advisors, and legal counsel to assist in the investment of the fund and may pay the state expenses incurred under those contracts from the fund. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of the state fiscal year does not revert to the state general fund.

(c) Money in the fund may be used only to make transfers to the state general fund under subsection (d).

(d) Not later than September 1 of each year, the department of state revenue shall certify to the budget agency and the auditor of state the additional amount of gross retail tax revenue that would have been collected in the preceding state fiscal year if the exemption under IC 6-2.5-5-16.5(b) for home energy acquired through home energy assistance had not been in effect during that preceding state fiscal year. The auditor of state shall, before September 1 of each year, transfer from the fund to the state general fund an amount equal to the lesser of:

(1) the amount certified by the department of state revenue under this subsection; or

(2) the balance in the fund.

(e) The state general fund is not liable for payment of a shortfall in expenditures, transfers, or distributions from the fund or any other fund due to a delay, reduction, or cancellation of payments scheduled to be received by the state under the multistate agreement related to litigation concerning mortgage foreclosure activities.".

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Page 3, line 32, delete "2013," and insert "**2020,**".
Page 4, line 4, delete "2013," and insert "**2020,**".
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1141 as printed January 25, 2012.)

HERSHMAN, Chairperson

Committee Vote: Yeas 12, Nays 0.

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