

HOUSE BILL No. 1332

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-9-42.

Synopsis: Property assessed clean energy. Authorizes the legislative body of a political subdivision to establish and administer a voluntary property assessed clean energy program to finance the installation of clean energy improvements by levying special assessments. Provides that a legislative body may authorize owner arranged financing or issue bonds in anticipation of collecting the special assessments to pay for the clean energy improvements.

Effective: July 1, 2012.

Culver, Sullivan

January 11, 2012, read first time and referred to Committee on Local Government.

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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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HOUSE BILL No. 1332



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

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

1 SECTION 1. IC 36-9-42 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]:

4 **Chapter 42. Property Assessed Clean Energy Program**

5 **Sec. 1. As used in this chapter, "board" refers to a legislative**
6 **body that administers this chapter with respect to a district. The**
7 **term includes a legislative body designated under section 8(c) of**
8 **this chapter.**

9 **Sec. 2. As used in this chapter, "clean energy improvement"**
10 **means a fixture, product, system, device, or interacting group of**
11 **devices that is permanently installed behind the meter of any**
12 **building to:**

13 (1) produce energy from one (1) or more clean energy
14 resources; or

15 (2) reduce energy consumption.

16 **The term includes a conservation measure.**

17 **Sec. 3. As used in this chapter, "clean energy resources" means**



1 the following sources and programs for the production or
2 conservation of electricity:

- 3 (1) Energy from wind.
4 (2) Solar energy.
5 (3) Photovoltaic cells and panels.
6 (4) Energy from:
7 (A) landfill gas to electric systems; and
8 (B) manure to gas systems.
9 (5) Geothermal heating and cooling systems.
10 (6) Energy from waste heat recovery systems.
11 (7) Conservation measures that reduce electricity
12 consumption.

13 Sec. 4. (a) As used in this chapter, "conservation measure"
14 means:

- 15 (1) a facility alteration;
16 (2) an alteration of a structure (as defined in IC 36-1-10-2); or
17 (3) a technology upgrade;

18 designed to reduce energy or other operating costs.

19 (b) The term includes the following:

- 20 (1) Providing insulation of the facility or structure and
21 systems in the facility or structure.
22 (2) Installing or providing for window and door systems,
23 including:
24 (A) storm windows and storm doors;
25 (B) caulking or weatherstripping;
26 (C) multiglazed windows and doors;
27 (D) heat absorbing or heat reflective glazed and coated
28 windows and doors;
29 (E) additional glazing;
30 (F) a reduction in glass area; and
31 (G) other modifications that reduce energy consumption.

32 (3) Installing automatic energy control systems.

33 (4) Modifying or replacing heating, ventilating, or air
34 conditioning systems.

35 (5) Lighting.

36 Sec. 5. As used in this chapter, "district" refers to a clean energy
37 improvement financing district designated under section 8 of this
38 chapter.

39 Sec. 6. As used in this chapter, "program" refers to a voluntary
40 property assessed clean energy program established under section
41 8 of this chapter.

42 Sec. 7. This chapter applies to all political subdivisions except

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1 townships.

2 **Sec. 8. (a) The legislative body of a political subdivision, or the**
 3 **legislative bodies of two (2) or more political subdivisions, may**
 4 **adopt a preliminary resolution or ordinance to:**

5 (1) establish a voluntary property assessed clean energy
 6 program;

7 (2) designate a clean energy improvement financing district;
 8 and

9 (3) authorize within the district the financing of clean energy
 10 improvements under this chapter.

11 (b) A preliminary resolution or ordinance adopted under
 12 subsection (a) must do the following:

13 (1) Establish the geographic boundaries of the proposed
 14 district.

15 (2) Describe the proposed method of financing of clean energy
 16 improvements installed in the district. Permissible methods
 17 include:

18 (A) soliciting owner arranged financing from a commercial
 19 lender;

20 (B) obtaining federal grants, loans, or both; and

21 (C) issuing bonds.

22 (3) Limit participation in the program to owners of the
 23 following types of property:

24 (A) Commercial.

25 (B) Industrial.

26 (C) Agricultural (excluding homesteads).

27 (D) Property owned by an approved postsecondary
 28 educational institution (as defined in IC 21-7-13-6(a)).

29 (c) If the legislative bodies of two (2) or more political
 30 subdivisions adopt a preliminary resolution or ordinance, the
 31 preliminary resolutions or ordinances must:

32 (1) comply with subsection (b);

33 (2) be identical; and

34 (3) designate one (1) legislative body to serve as the board to
 35 administer the requirements of this chapter with respect to
 36 the district established in the preliminary resolution or
 37 ordinance.

38 A legislative body designated as the board under subdivision (3)
 39 must have authority to issue bonds.

40 (d) The boundaries of a district need not coincide with those of
 41 other political subdivisions.

42 **Sec. 9. In addition to other powers exercised by a legislative**

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1 body designated as a board, the board may do the following with
2 respect to a program:

3 (1) Make and enter into contracts and other instruments with
4 public and private entities.

5 (2) Accept grants, guarantees, and donations of property,
6 labor, services, and other things of value from any public or
7 private source.

8 (3) Employ or contract for managerial, legal, technical,
9 clerical, accounting, or other assistance.

10 (4) Levy and collect special assessments.

11 (5) Borrow money from any public or private source.

12 (6) Issue bonds and provide security for the repayment of
13 borrowed money.

14 (7) Collect reasonable fees and charges in connection with
15 issuing bonds and with related technical, consultative, or
16 project assistance services.

17 (8) Provide for the investment of any funds not required for
18 immediate disbursement in the same manner as other
19 municipal funds are invested.

20 (9) Record a special assessment as a lien on an assessed
21 property only if the special assessment becomes delinquent.

22 (10) Develop appropriate underwriting guidelines for the
23 program, including:

24 (A) assurances that the term of a special assessment does
25 not exceed the life of a clean energy improvement;

26 (B) appropriate ratios of assessment to assessed value; and

27 (C) verification that a property owner does not owe
28 delinquent taxes, special assessments, or water or sewer
29 charges.

30 (11) Exercise other powers necessary to carry out the board's
31 responsibilities under this chapter.

32 **Sec. 10. (a)** A property owner that desires to participate in the
33 program shall submit an application to the board in the form and
34 according to a schedule determined by the board. The application
35 must contain the following:

36 (1) The address and legal description of the property on which
37 the clean energy improvement for which the property owner
38 desires financing will be installed.

39 (2) A description and the cost of all clean energy
40 improvements proposed to be installed on the property.

41 (3) A statement of intent to participate in the financing of the
42 clean energy improvement through the imposition of a special

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1 assessment on the property.

2 (4) A statement showing no delinquent property taxes or
3 special assessments on the property for the shorter of the
4 following:

5 (A) The two (2) immediately preceding taxable years.

6 (B) The period during which the property owner has
7 owned the property.

8 (5) A statement of intent to conduct a baseline energy audit to
9 establish future energy savings and to verify to the board that
10 the clean energy improvement is installed properly and is
11 operating as intended.

12 (6) For a clean energy improvement financed with more than
13 two hundred fifty thousand dollars (\$250,000) in assessments:

14 (A) A statement of intent to provide the board with
15 ongoing measurements that establish the energy savings
16 realized from the installation of the clean energy
17 improvement.

18 (B) A written guarantee by the contractor that installed the
19 clean energy improvement that:

20 (i) the clean energy improvement will achieve a prorated
21 savings to investment ratio greater than one (1); and

22 (ii) the contractor will pay the property owner, on an
23 annual basis, any shortfall in savings below the
24 guaranteed level.

25 (b) The board shall:

26 (1) review; and

27 (2) approve or deny;

28 an application submitted under subsection (a) according to a
29 schedule determined by the board. The board shall use the costs
30 reported under subsection (a)(2) to determine a total assessment
31 for each property for which an application is approved.

32 (c) A property owner may withdraw or amend an application at
33 any time before a special assessment is levied on the owner's
34 property under section 11 of this chapter.

35 (d) The board shall establish a procedure by which the board
36 may adjust the amounts of assessments determined under
37 subsection (b) to ensure that collections from the assessments are
38 adequate to make all payments on the bonds as described in section
39 12 of this chapter.

40 (e) The board shall communicate with all parties having an
41 interest in a property for which an application is approved in a

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1 manner consistent with existing procedures and practices for other
2 special assessments.

3 (f) A board that levies a special assessment may:

4 (1) allow a third party that has provided financing for a clean
5 energy improvement to collect special assessments with
6 respect to the clean energy improvement; and

7 (2) require the third party to inform the board if a special
8 assessment is delinquent.

9 A delinquent special assessment becomes a lien on the property on
10 which the clean energy improvement is installed.

11 Sec. 11. (a) Based on the assessments determined under section
12 10(b) of this chapter, and subject to any withdrawal or amendment
13 of an application under section 10(c) of this chapter, a board shall
14 have an assessment roll prepared and levy a special assessment on
15 each property in the district for which one (1) or more clean energy
16 improvements will be financed under this chapter. The assessment
17 roll must include the following for each property subject to an
18 assessment under this chapter:

19 (1) The name of the owner.

20 (2) A description of the property.

21 (3) The total special assessment.

22 (4) The annual installment of the assessment determined
23 under section 12 of this chapter.

24 An assessment indicated against a property on the assessment roll
25 is presumed to be of special benefit to the property.

26 (b) Immediately after the assessment roll is prepared and filed,
27 the board shall publish a notice according to IC 5-3-1. The
28 assessment roll is not considered to be completed for purposes of
29 this section until any adjustments under section 10(d) of this
30 chapter are made. The notice must do the following:

31 (1) Describe the purpose of the special assessment.

32 (2) State that the assessment roll, with the names of owners
33 and descriptions of property subject to assessment and the
34 amounts of any assessments, is on file and may be inspected in
35 the board's office.

36 (c) Following any adjustments under section 10(d) of this
37 chapter, the board shall complete and confirm the assessment roll.
38 The assessment roll must show the total assessment opposite each
39 name and a description of the property on the roll. The board
40 shall:

41 (1) deliver the completed assessment roll to:

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- 1 (A) the auditor and treasurer of each county in which a
 2 property listed on the roll is located; and
 3 (B) the municipal fiscal officer if the financing under this
 4 chapter is initiated by a municipality; and
 5 (2) publish a notice of the completed assessment roll under
 6 IC 5-3-1.
- 7 (d) Except as provided in subsection (e), the decision of the
 8 board as to all assessments is final and conclusive on all parties.
- 9 (e) An owner of an assessed property may appeal a special
 10 assessment to the circuit or superior court for the county in which
 11 the assessed property is located. The clerk of the court shall certify
 12 the judgment to the board. The board shall immediately notify the
 13 property owner of the amount of the assessment fixed by the court.
- 14 **Sec. 12. (a) Except as provided in sections 10(f) and 15 of this**
 15 **chapter, all assessments under this chapter are payable to the**
 16 **treasurer of the county in which the property that is subject to the**
 17 **assessment is located. The county treasurer shall:**
- 18 (1) annually, over the twenty (20) year bond payment period
 19 under section 14 of this chapter, bill to the property an
 20 amount equal to the quotient of the total assessment
 21 determined for the property under this chapter divided by
 22 twenty (20); and
 23 (2) bill the amount under subdivision (1) annually to a
 24 property regardless of any changes in ownership of the
 25 property. A change in ownership of the property does not
 26 accelerate or otherwise alter the twenty (20) year payment
 27 period described in subdivision (1).
- 28 (b) Subject to subsection (d), a county treasurer shall bill,
 29 collect, and enforce the assessments in the same manner that
 30 property taxes are billed, collected, and enforced.
- 31 (c) Except as provided in section 15 of this chapter, a county
 32 treasurer shall distribute assessments collected under subsection
 33 (b) to the county auditor for deposit in a separate special fund
 34 under section 13 of this chapter.
- 35 (d) The county treasurer shall specify on each property tax
 36 statement that the assessment under this chapter is separate and
 37 distinct from the property tax.
- 38 **Sec. 13. If a board issues bonds under section 14 of this chapter,**
 39 **the proceeds from assessments levied by a board under this**
 40 **chapter constitute a separate special fund for the security and**
 41 **payment of any bonds issued by the board under section 14 of this**

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1 chapter, including debt service reserves to secure the payment of
2 the bonds.

3 Sec. 14. (a) The board may issue bonds in anticipation of the
4 collection of the assessments to finance the installation of clean
5 energy improvements in the district. The board may structure the
6 bond placement for individual or pooled clean energy
7 improvements. If the board issues bonds, the board shall:

- 8 (1) issue and sell the bonds in the manner prescribed for other
- 9 bonds of the municipality; and
- 10 (2) make the bond payments described in section 12 of this
- 11 chapter over a term of twenty (20) years.

12 The board may issue the bonds at any time after a district is
13 designated.

14 (b) The board shall use the proceeds of the bonds issued under
15 subsection (a) to pay the costs of the clean energy improvements
16 for the properties for which applications were approved under
17 section 10(b) of this chapter, subject to any adjustments under
18 section 10(d) of this chapter or any appeals under section 11 of this
19 chapter.

20 (c) Bonds issued under this section:

- 21 (1) are not an obligation of the political subdivision that issued
- 22 bonds but are an indebtedness of the board; and
- 23 (2) are payable solely from proceeds of special assessments
- 24 levied by the board under section 11 of this chapter.

25 Sec. 15. A board may authorize the financing of clean energy
26 improvements with owner arranged financing from a commercial
27 lender. Under this arrangement, the board may levy a special
28 assessment under section 11 of this chapter and either:

- 29 (1) collect special assessment payments and forward the
- 30 payments to the commercial lender; or
- 31 (2) authorize a property owner to pay the special assessments
- 32 directly to the commercial lender.

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