
HOUSE BILL No. 1399

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-3; IC 36-7-4-207.

Synopsis: Indianapolis-Marion County issues. Provides that the consolidated law enforcement department of a county having a consolidated city is a division of the department of public safety under the direction and control of the director of public safety. Allows the mayor of a consolidated city to reduce or modify separate items of an ordinance appropriating money or levying a tax. (Under current law, the mayor may approve or veto separate items of only an ordinance appropriating money or levying a tax.) Eliminates the requirement that the city-county council approve the director and deputy director appointments of the mayor of the consolidated city. Eliminates provisions that allow the city-county council to require the capital improvement board of managers to make payments in lieu of taxes (PILOTS) for deposit in the consolidated county fund. Allows the mayor of a consolidated city to appoint two additional members to the metropolitan development commission, and eliminates the appointments of the county board of commissioners (consisting of the county treasurer, county auditor, and county assessor). Allows the controller of the consolidated city and county to allot amounts appropriated to an office, department, or agency of the consolidated city or county.

Effective: July 1, 2013.

Kirchhofer

January 22, 2013, read first time and referred to Committee on Government and Regulatory Reform.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1399



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 36-3-1-5.1, AS AMENDED BY P.L.182-2009(ss),
2 SECTION 400, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2013]: Sec. 5.1. (a) Except for those duties that
4 are reserved by law to the county sheriff in this section, the city-county
5 legislative body may by majority vote adopt an ordinance, approved by
6 the mayor, to consolidate the police department of the consolidated city
7 and the county sheriff's department. **The consolidated law**
8 **enforcement department must be a division of the department of**
9 **public safety under the direction and control of a director of public**
10 **safety.**
11 (b) The city-county legislative body may not adopt an ordinance
12 under this section unless it first:
13 (1) holds a public hearing on the proposed consolidation; and
14 (2) determines that:
15 (A) reasonable and adequate police protection can be provided
16 through the consolidation; and
17 (B) the consolidation is in the public interest.



1 (c) If an ordinance is adopted under this section, the consolidation
2 shall take effect on the date specified in the ordinance.

3 (d) Notwithstanding any other law, an ordinance adopted under this
4 section must provide that the county sheriff's department shall be
5 responsible for all the following for the consolidated city and the
6 county under the direction and control of the sheriff:

7 (1) County jail operations and facilities.

8 (2) Emergency communications.

9 (3) Security for buildings and property owned by:

10 (A) the consolidated city;

11 (B) the county; or

12 (C) both the consolidated city and county.

13 (4) Service of civil process and collection of taxes under tax
14 warrants.

15 (5) Sex and violent offender registration.

16 (e) The following apply if an ordinance is adopted under this
17 section:

18 (1) The department of local government finance shall adjust the
19 maximum permissible ad valorem property tax levy of the
20 consolidated city and the county for property taxes first due and
21 payable in the year a consolidation takes effect under this section.
22 When added together, the adjustments under this subdivision
23 must total zero (0).

24 (2) The ordinance must specify which law enforcement officers
25 of the police department and which law enforcement officers of
26 the county sheriff's department shall be law enforcement officers
27 of the consolidated law enforcement department.

28 (3) The ordinance may not prohibit the providing of law
29 enforcement services for an excluded city under an interlocal
30 agreement under IC 36-1-7.

31 (4) A member of the county police force who:

32 (A) was an employee beneficiary of the sheriff's pension trust
33 before the consolidation of the law enforcement departments;
34 and

35 (B) after the consolidation becomes a law enforcement officer
36 of the consolidated law enforcement department;

37 remains an employee beneficiary of the sheriff's pension trust.
38 The member retains, after the consolidation, credit in the sheriff's
39 pension trust for service earned while a member of the county
40 police force and continues to earn service credit in the sheriff's
41 pension trust as a member of the consolidated law enforcement
42 department for purposes of determining the member's benefits

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from the sheriff's pension trust.
(5) A member of the police department of the consolidated city who:
 (A) was a member of the 1953 fund or the 1977 fund before the consolidation of the law enforcement departments; and
 (B) after the consolidation becomes a law enforcement officer of the consolidated law enforcement department;
remains a member of the 1953 fund or the 1977 fund. The member retains, after the consolidation, credit in the 1953 fund or the 1977 fund for service earned while a member of the police department of the consolidated city and continues to earn service credit in the 1953 fund or the 1977 fund as a member of the consolidated law enforcement department for purposes of determining the member's benefits from the 1953 fund or the 1977 fund.
(6) The ordinance must designate the merit system that shall apply to the law enforcement officers of the consolidated law enforcement department.
(7) The ordinance must designate who shall serve as a coapplicant for a warrant or an extension of a warrant under IC 35-33.5-2.
(8) The consolidated city may levy property taxes within the consolidated city's maximum permissible ad valorem property tax levy limit to provide for the payment of the expenses for the operation of the consolidated law enforcement department. The police special service district established under section 6 of this chapter may levy property taxes to provide for the payment of expenses for the operation of the consolidated law enforcement department within the territory of the police special service district. Property taxes to fund the pension obligation under IC 36-8-7.5 may be levied only by the police special service district within the police special service district. The consolidated city may not levy property taxes to fund the pension obligation under IC 36-8-7.5. Property taxes to fund the pension obligation under IC 36-8-8 for members of the 1977 police officers' and firefighters' pension and disability fund who were members of the police department of the consolidated city on the effective date of the consolidation may be levied only by the police special service district within the police special service district. Property taxes to fund the pension obligation under IC 36-8-10 for members of the sheriff's pension trust and under IC 36-8-8 for members of the 1977 police officers' and firefighters' pension and disability fund who were not members of the police department of the

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1 consolidated city on the effective date of the consolidation may be
 2 levied by the consolidated city within the consolidated city's
 3 maximum permissible ad valorem property tax levy. The assets of
 4 the consolidated city's 1953 fund and the assets of the sheriff's
 5 pension trust may not be pledged after the effective date of the
 6 consolidation as collateral for any loan.

7 (9) The executive of the consolidated city shall provide for an
 8 independent evaluation and performance audit, due before March
 9 1 of the year following the adoption of the consolidation
 10 ordinance and for the following two (2) years, to determine:

11 (A) the amount of any cost savings, operational efficiencies, or
 12 improved service levels; and

13 (B) any tax shifts among taxpayers;
 14 that result from the consolidation. The independent evaluation
 15 and performance audit must be provided to the legislative council
 16 in an electronic format under IC 5-14-6 and to the budget
 17 committee.

18 SECTION 2. IC 36-3-2-10, AS AMENDED BY P.L.146-2008,
 19 SECTION 701, IS AMENDED TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) The general assembly finds
 21 the following:

22 (1) That the tax base of the consolidated city and the county have
 23 been significantly eroded through the ownership of tangible
 24 property by separate municipal corporations and other public
 25 entities that operate as private enterprises yet are exempt or whose
 26 property is exempt from property taxation.

27 (2) That to restore this tax base and provide a proper allocation of
 28 the cost of providing governmental services the legislative body
 29 of the consolidated city and county should be authorized to collect
 30 payments in lieu of taxes from these public entities.

31 (3) That the appropriate maximum payments in lieu of taxes
 32 would be the amount of the property taxes that would be paid if
 33 the tangible property were not subject to an exemption.

34 (b) As used in this section, the following terms have the meanings
 35 set forth in IC 6-1.1-1:

36 (1) Assessed value.

37 (2) Exemption.

38 (3) Owner.

39 (4) Person.

40 (5) Personal property.

41 (6) Property taxation.

42 (7) Tangible property.

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- 1 (8) Township assessor.
- 2 (c) As used in this section, "PILOTS" means payments in lieu of
- 3 taxes.
- 4 (d) As used in this section, "public entity" means any of the
- 5 following government entities in the county:
- 6 (1) An airport authority operating under IC 8-22-3.
- 7 ~~(2) A capital improvement board of managers under IC 36-10-9.~~
- 8 ~~(3) (2) A building authority operating under IC 36-9-13.~~
- 9 ~~(4) (3) A wastewater treatment facility.~~
- 10 (e) The legislative body of the consolidated city may adopt an
- 11 ordinance to require a public entity to pay PILOTS at times set forth in
- 12 the ordinance with respect to:
- 13 (1) tangible property of which the public entity is the owner or the
- 14 lessee and that is subject to an exemption;
- 15 (2) tangible property of which the owner is a person other than a
- 16 public entity and that is subject to an exemption under IC 8-22-3;
- 17 or
- 18 (3) both.
- 19 The ordinance remains in full force and effect until repealed or
- 20 modified by the legislative body.
- 21 (f) The PILOTS must be calculated so that the PILOTS may be in
- 22 any amount that does not exceed the amount of property taxes that
- 23 would have been levied by the legislative body for the consolidated city
- 24 and county upon the tangible property described in subsection (e) if the
- 25 property were not subject to an exemption from property taxation.
- 26 (g) PILOTS shall be imposed as are property taxes and shall be
- 27 based on the assessed value of the tangible property described in
- 28 subsection (e). Except as provided in subsection (l), the township
- 29 assessor, or the county assessor if there is no township assessor for the
- 30 township, shall assess the tangible property described in subsection (e)
- 31 as though the property were not subject to an exemption. The public
- 32 entity shall report the value of personal property in a manner consistent
- 33 with IC 6-1.1-3.
- 34 (h) Notwithstanding any law to the contrary, a public entity is
- 35 authorized to pay PILOTS imposed under this section from any legally
- 36 available source of revenues. The public entity may consider these
- 37 payments to be operating expenses for all purposes.
- 38 (i) PILOTS shall be deposited in the consolidated county fund and
- 39 used for any purpose for which the consolidated county fund may be
- 40 used.
- 41 (j) PILOTS shall be due as set forth in the ordinance and bear
- 42 interest, if unpaid, as in the case of other taxes on property. PILOTS

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1 shall be treated in the same manner as taxes for purposes of all
2 procedural and substantive provisions of law.

3 (k) PILOTS imposed on a wastewater treatment facility may be paid
4 only from the cash earnings of the facility remaining after provisions
5 have been made to pay for current obligations, including:

- 6 (1) operating and maintenance expenses;
7 (2) payment of principal and interest on any bonded indebtedness;
8 (3) depreciation or replacement fund expenses;
9 (4) bond and interest sinking fund expenses; and
10 (5) any other priority fund requirements required by law or by any
11 bond ordinance, resolution, indenture, contract, or similar
12 instrument binding on the facility.

13 (l) If the duties of the township assessor have been transferred to the
14 county assessor as described in IC 6-1.1-1-24, a reference to the
15 township assessor in this section is considered to be a reference to the
16 county assessor.

17 SECTION 3. IC 36-3-4-16 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 16. (a) Within ten (10)
19 days after an ordinance or resolution is presented to ~~him~~, **the executive**,
20 the executive shall:

- 21 (1) approve the ordinance or resolution, by entering ~~his~~ **the**
22 **executive's** approval on it, signing it, and sending the legislative
23 body a message announcing ~~his~~ **the executive's** approval; **or**
24 (2) veto the ordinance or resolution, by returning it to the
25 legislative body with a message announcing ~~his~~ **the executive's**
26 veto and stating ~~his~~ **the** reasons for the veto; **or**
27 (3) **reduce or modify, but not increase items of an ordinance**
28 **appropriating money or levying a tax.**

29 The executive may approve, ~~or~~ veto, **reduce, or modify** separate items
30 of an ordinance appropriating money or levying a tax.

31 (b) If the executive fails to perform ~~his~~ **the executive's** duty under
32 subsection (a), the ordinance or resolution is considered vetoed.

33 (c) Whenever an ordinance or resolution is vetoed by the executive,
34 it is considered defeated unless the legislative body, at its first regular
35 or special meeting after the ten (10) day period prescribed by
36 subsection (a), passes the ordinance or resolution over ~~his~~ **the**
37 **executive's** veto by a two-thirds (2/3) vote.

38 SECTION 4. IC 36-3-5-2, AS AMENDED BY P.L.227-2005,
39 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2013]: Sec. 2. (a) The executive shall ~~subject to the approval~~
41 ~~of the city-county legislative body~~, appoint each of the executive's
42 deputies and the director of each department of the consolidated city.



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1 A deputy or director is appointed for a term of one (1) year and until a
 2 successor is appointed and qualified, but serves at the pleasure of the
 3 executive.

4 (b) ~~When making an appointment under subsection (a), the~~
 5 ~~executive shall submit the name of an appointee to an office to the~~
 6 ~~legislative body for its approval as follows:~~

7 (1) ~~When the office has an incumbent, not more than forty-five~~
 8 ~~(45) days before the expiration of the incumbent's one (1) year~~
 9 ~~term.~~

10 (2) ~~When the office has been vacated, not more than forty-five~~
 11 ~~(45) days after the vacancy occurs.~~

12 (c) (b) The executive may appoint an acting deputy or acting
 13 director whenever the incumbent is incapacitated or the office has been
 14 vacated. An acting deputy or acting director has all the powers of the
 15 office.

16 (d) (c) The executive shall appoint:

17 (1) a controller;

18 (2) two (2) deputy controllers, only one (1) of whom may be from
 19 the same political party as the executive; and

20 (3) a corporation counsel;

21 each of whom serves at the pleasure of the executive.

22 (e) (d) The corporation counsel and every attorney who is a city
 23 employee working for the corporation counsel must be a resident of the
 24 county and admitted to the practice of law in Indiana.

25 SECTION 5. IC 36-3-6-10 IS ADDED TO THE INDIANA CODE
 26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 27 1, 2013]: **Sec. 10. (a) As used in this section, "office, department, or**
 28 **agency" means any office, department, or agency of the**
 29 **consolidated city or the county having a consolidated city.**

30 (b) **Each year shall be divided into four (4) quarterly allotment**
 31 **periods, beginning respectively on the first day of January, April,**
 32 **July, and October. However, in any case where the quarterly**
 33 **allotment period is impracticable, the controller may prescribe a**
 34 **different period suited to the circumstances but not extending**
 35 **beyond the end of any calendar year.**

36 (c) **Except as provided in subsection (d), the allotment system**
 37 **and the encumbering of funds apply to appropriations and funds**
 38 **of all kinds, including dedicated funds from which expenditures are**
 39 **made under the authority of any office, department, or agency.**

40 (d) **The allotment system does not apply to the following:**

41 (1) **Money made available for the purpose of conducting a**
 42 **post-audit of financial transactions of any office, department,**

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1 or agency.

2 (2) Appropriations for construction or for the acquisition of
3 real estate for public purposes that are exempted from the
4 allotment system by the executive of the consolidated city.

5 (e) An appropriation to any office, department, or agency is not
6 available for expenditure until all the following occur:

7 (1) The office, department, or agency submits to the controller
8 a request for allotment that consists of:

9 (A) an estimate of the amount required for each activity;
10 and

11 (B) each purpose for which money is to be expended during
12 the applicable allotment period.

13 (2) The estimate described in subdivision (1)(A) has been
14 approved, increased, or reduced by the controller as provided
15 in subsection (h).

16 (3) The funds are allotted.

17 (f) The controller shall prescribe the form of a request for
18 allotment. The request must be submitted to the controller before
19 the beginning of the allotment period, within a time determined by
20 the controller.

21 (g) Each request for allotment shall be reviewed by the
22 controller. The controller shall allot amounts for expenditure if:

23 (1) the estimate described in subsection (e)(1)(A) is within the
24 terms of the appropriation as to amount and purpose, having
25 due regard for the probable future needs of the office,
26 department, or agency for the remainder of the calendar year
27 or other term for which the appropriation was made; and

28 (2) the office, department, or agency contemplates
29 expenditure of the allotment during the allotment period.

30 (h) The controller shall:

31 (1) modify the estimate so as to conform with the terms of the
32 appropriation and the prospective needs of the office,
33 department, or agency; and

34 (2) reduce or increase the amount to be allotted accordingly.

35 The controller shall notify every office, department, or agency of
36 its allotments at least five (5) days before the beginning of each
37 allotment period. The total amount allotted to any office,
38 department, or agency for the fiscal year or other term for which
39 the appropriation was made may not exceed the amount
40 appropriated for the year or term.

41 (i) The controller may at any time modify or amend any
42 allotment made by the controller.

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- (j) If the controller discovers at any time that:**
 - (1) the probable receipts from taxes or other sources for any fund will be less than were anticipated; and**
 - (2) the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted;**

the controller shall, with the approval of the executive of the consolidated city, and after notice to the office, department, or agency concerned, reduce the amount or amounts allotted or to be allotted.

(k) The controller shall promptly transmit records of all allotments and modifications to the county auditor.

SECTION 6. IC 36-7-4-207, AS AMENDED BY P.L.146-2008, SECTION 718, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 207. (a) ADVISORY. In a city having a park board and a city civil engineer, the city plan commission consists of nine (9) members, as follows:

- (1) One (1) member appointed by the city legislative body from its membership.
- (2) One (1) member appointed by the park board from its membership.
- (3) One (1) member or designated representative appointed by the city works board.
- (4) The city civil engineer or a qualified assistant appointed by the city civil engineer.
- (5) Five (5) citizen members, of whom no more than three (3) may be of the same political party, appointed by the city executive.

(b) ADVISORY. If a city lacks either a park board or a city civil engineer, or both, subsection (a) does not apply. In such a city or in any town, the municipal plan commission consists of seven (7) members, as follows:

- (1) The municipal legislative body shall appoint three (3) persons, who must be elected or appointed municipal officials or employees in the municipal government, as members.
- (2) The municipal executive shall appoint four (4) citizen members, of whom no more than two (2) may be of the same political party.

(c) AREA. To provide equitable representation of rural and urban populations, representation on the area plan commission is determined as follows:

- (1) Seven (7) representatives from each city having a population

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1 of more than one hundred five thousand (105,000).

2 (2) Six (6) representatives from each city having a population of
3 not less than seventy thousand (70,000) nor more than one
4 hundred five thousand (105,000).

5 (3) Five (5) representatives from each city having a population of
6 not less than thirty-five thousand (35,000) but less than seventy
7 thousand (70,000).

8 (4) Four (4) representatives from each city having a population of
9 not less than twenty thousand (20,000) but less than thirty-five
10 thousand (35,000).

11 (5) Three (3) representatives from each city having a population
12 of not less than ten thousand (10,000) but less than twenty
13 thousand (20,000).

14 (6) Two (2) representatives from each city having a population of
15 less than ten thousand (10,000).

16 (7) One (1) representative from each town having a population of
17 more than two thousand one hundred (2,100), and one (1)
18 representative from each town having a population of two
19 thousand one hundred (2,100) or less that had a representative
20 before January 1, 1979.

21 (8) Such representatives from towns having a population of not
22 more than two thousand one hundred (2,100) as are provided for
23 in section 210 of this chapter.

24 (9) Six (6) county representatives if the total number of municipal
25 representatives in the county is an odd number, or five (5) county
26 representatives if the total number of municipal representatives is
27 an even number.

28 (d) METRO. The metropolitan development commission consists
29 of nine (9) citizen members, as follows:

30 (1) ~~Four (4)~~ **Six (6)** members, of whom no more than ~~two (2)~~
31 **three (3)** may be of the same political party, appointed by the
32 executive of the consolidated city.

33 (2) Three (3) members, of whom no more than two (2) may be of
34 the same political party, appointed by the legislative body of the
35 consolidated city.

36 ~~(3) Two (2) members, who must be of different political parties,~~
37 ~~appointed by the board of commissioners of the county.~~

38 (e) METRO. The legislative body of the consolidated city shall
39 appoint an individual to serve as a nonvoting adviser to the
40 metropolitan development commission when the commission is acting
41 as the redevelopment commission of the consolidated city under
42 IC 36-7-15.1. If the duties of the metropolitan development

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1 commission under IC 36-7-15.1 are transferred to another entity under
2 IC 36-3-4-23, the individual appointed under this subsection shall serve
3 as a nonvoting adviser to that entity. A nonvoting adviser appointed
4 under this subsection:

5 (1) must also be a member of the school board of a school
6 corporation that includes all or part of the territory of the
7 consolidated city;

8 (2) is not considered a member of the metropolitan development
9 commission for purposes of IC 36-7-15.1 but is entitled to attend
10 and participate in the proceedings of all meetings of the
11 metropolitan development commission (or any successor entity
12 designated under IC 36-3-4-23) when it is acting as a
13 redevelopment commission under IC 36-7-15.1;

14 (3) is not entitled to a salary, per diem, or reimbursement of
15 expenses;

16 (4) serves for a term of two (2) years and until a successor is
17 appointed; and

18 (5) serves at the pleasure of the legislative body of the
19 consolidated city.

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